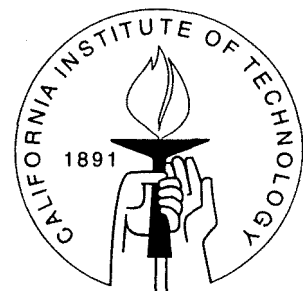


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REAPPORTIONMENT WARS: PARTY, RACE, AND REDISTRICTING IN
CALIFORNIA, 1971-1992

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Abstract

Understanding the impact of the redistricting of state legislative and congressional seats in California in the 1990s on ethnic minorities and the two principal political parties requires more than a narrative of events. Without explicit quantitative techniques for estimating the partisan consequences of plans that were unsuccessfully proposed, as well as those that were adopted, we cannot gauge what difference the ultimate choice of plans made or fully evaluate the intentions of the framers and opponents of each plan. Accordingly, in Social Science Working Paper 929, I developed and tested two methods of comparing the likely partisan outcomes under different reapportionment schemes. In this paper, I apply those techniques.

But neither quantitative methods nor a story that begins in 1990 tells us all we need to know. The recent past indelibly imprinted the actors in 1991 and deeply affected their behavior. Therefore, I begin in 1971 and explain how a controversy over electing a Latino to the Assembly wrecked an agreed compromise and led to a reapportionment imposed by the State Supreme Court, employing Special Masters and technicians, an experience that kindled Democratic, as well as Republican hopes in 1991 that the judiciary and those whom they appointed to carry out the redistricting would not treat their party unfairly. Even more important for the combatants in the 1990s was the fact that Democratic party control of the redistricting process in the 1980s led to a bitter ten-year partisan struggle that ultimately undermined the state legislature as an institution, brought about a partisan Republican takeover of the State Supreme Court, and encouraged Republicans to torpedo all compromise on redistricting in 1991 and turn reapportionment over to the court.

In the background of these events, and helping to shape them, were actions by the Congress and the federal judiciary. The equal population and minority vote dilution cases and the evolving Voting Rights Act significantly constrained the degree of discrimination

against partisan and ethnic minorities in California, as elsewhere in the nation. As Latinos and African-Americans became a more and more important part of the Democratic leadership, as well as of the Democratic voters, partisan and ethnic interests became more and more correlated, and external legal constraints, less necessary to protect minority political power - as long as Democrats controlled redistricting. When Democrats lost control, and when unelected technocrats, particularly a redistricting commission created and appointed by Gov. Pete Wilson in 1991, took over, minority interests were largely ignored. Fortunately, in 1991, the judicial precedents protecting minorities were still strong and the technocrats who drafted the plans for the State Supreme Court were both diligent and, overall, sympathetic to minority concerns. What would happen if those precedents were reversed or weakened, as some have interpreted the U.S. Supreme Court decisions in *Shaw v. Reno* and *Miller v. Johnson* as doing, depends on who retains the ultimate power to draw districts.

The three chief findings of the quantitative analysis in this paper are striking: Neither the Masters' Plan of 1973 nor the so-called "Burton Gerrymander" of 1981 was as pro-Democratic as has often been suggested, nor was the Masters' Plan of 1991 so non-partisan.

The lessons for future reapportionments in California suggested by the analysis of those from 1971 on are pessimistic. Term limits will rob the legislature of any expertise in redistricting, turning remapping entirely over to unaccountable technicians, lobbyists, and party leaders. Term limits are also likely to increase partisan strife, because a bipartisan incumbent gerrymander will become impossible. The recent California tendency to replace legislative bargaining over reapportionment with judicial fiat, the courts' habit of intervening in matters previously left to the legislature, the public's cynicism about any legislative activity, and the U.S. Supreme Court's invitation to anyone aggrieved by a remapping to file suit virtually insures that redistricting in 2001 will be designed by, or at least exhaustively challenged in the courts. Whether that will be good for democracy and for the rights of ethnic minorities is less certain.

REAPPORTIONMENT WARS: PARTY, RACE, AND REDISTRICTING IN CALIFORNIA, 1971-1992¹

I. INTRODUCTION: THE TEN YEARS' WAR

The 1980s was the decade of reapportionment in California politics. Ever since 1910, when Los Angeles passed San Francisco in population and the first urban-rural and sectional conflict over redistricting bitterly divided the state's legislature, the issue has disrupted politics every ten years. (Wilkening 1977.) But never before has it lasted for the entire decade, coloring political events nationally as well as locally and spilling over into the next reapportionment cycle. From 1981 to 1991, Republicans contended that if only they could obtain a "fair" reapportionment through a court or commission, they would control the congressional delegation and that of the lower house of the state legislature. Attempting to overturn what they considered partisan gerrymanders, the GOP sponsored seven largely unsuccessful referenda on the subject from 1982 to 1990 and flirted with leaders of minority groups, offering them safely "packed" seats at the expense of Anglo Democrats.

In 1991-92, the Republicans, led by newly elected Gov. Pete Wilson, finally got their wish, adamantly refusing to compromise or even negotiate seriously with the Democratic majority in the legislature and thereby insuring that their partisan allies on the state's courts would superintend the drawing of the new districts. Although Democrats and, to a lesser extent, Latino groups were displeased with the resulting boundaries, Republicans were jubilant. Nonetheless, Democrats carried the 1992 elections for the state Assembly and Senate and for Congress by almost exactly the same margins as with the old "gerrymandered" lines of the 1980s. These results called into question the dogma held so unquestioningly during the 1980s by political elites of both parties in the state that the exact placement of district lines was the key to political control of the state.² Although the fortunes of individual politicians can often be dramatically affected by redistricting, it may be much more difficult, at least in a state as large and complex as California, to transform the statewide results by line-drawing.

This paper reviews the extraordinarily complicated and conflicted course of redistricting in California from the 1970s through the 1990s and applies new and revealing measures of the partisan effects of redistricting to determine the significance of redistricting in changing the balance of political power in the

¹Daniel Hays Lowenstein and Jonathan Steinberg made this a better paper with their helpful comments on an earlier draft. Most writers on California reapportionment have been participants in the process. E.g., Baker 1962; Cain 1984; Hinderaker and Waters 1952; Lowell and Craigie 1985; Quinn 1981 and 1984; Wilkening 1977. Although I have never helped to draw a district, I did serve as an expert witness for most of the members of the Democratic congressional delegation in an unsuccessful federal court challenge to the 1991 Special Masters' Plan.

²For similar questioning about the 1950s and 60s in California, see Way 1962, 261, and Quinn 1984, ch.1,40; and for other states, Basehart and Comer 1991.

state. Using evidence not only from plans that were adopted, but from those that were rejected, it simulates the outcomes in actual elections under a range of alternative plans. It gives explicit, easily replicable answers to the question of how election outcomes would have differed if other redistricting schemes had been chosen. In particular, it assesses the effect of the so-called “Burton gerrymander” of congressional seats in the 1980s, which has been credited with “derailing the Reagan Revolution” in national politics. (Quinn 1984, Introduction, 1.)

A second purpose of the paper is to assess the importance for political parties and ethnic minority groups of the constraints on redistricting imposed by national legal and constitutional standards. Is it safe now to withdraw Congress and the federal courts from the “political thicket” of redistricting, except perhaps to protect the rights of allegedly beleaguered Anglo majorities, as some people claim?³ A quick glance at reapportionment politics in the period from 1920 through 1965 in California suggests how important judicial intervention has been in the past. The state's 1879 constitution mandated reapportionment once a decade and required that districts contain equal numbers of people. Nevertheless, the urban-rural conflict in the increasingly urbanized state of the 1920s prevented agreement over redistricting in the 1921, 1923, and 1925 legislatures, and in 1926, the Farm Bureau Federation led a referendum campaign to malapportion the state senate by constitutional amendment. No county could have more than one state senator, and not more than three counties could compose a state senate district. By 1960, the ratio of the population of the largest to the smallest senate district was 422:1. (Baker 1962, 51.) Lobbyists, personified by the notorious Artie Samish (Samish and Thomas 1971), dictated many of the state's policies, while the Republican party and the reactionary urban press, led by the *Los Angeles Times*, denounced any attempt to overturn the grossly unequal apportionment rules for the senate as a plot by “un-American,” communist-dominated unions to impose “boss rule” on the state and to tax worthy farmers to provide social welfare schemes for poor city-dwellers. (Barclay 1951; Hinderaker and Waters 1952). Initiative measures to decrease the malapportionment failed in 1928, 1948, 1960, and 1962. (Baker 1962; Quinn 1981.) Naturally, because the vast majority of politically active Latinos and African Americans lived in the cities, there were no minority state senators, although Los Angeles and Oakland did elect a string of black representatives to the Assembly. It was only after the equal state apportionment case of *Reynolds v. Sims* (377 U.S. 533) in 1964 that urban areas received their fair numbers of representatives and that it became possible to elect members of minority groups to the state senate.

Such Supreme Court decisions not only guarded democracy in general, they also constrained the ability of those who drew district lines to distort the results by party or other group. If there were no limit to the size of districts, it would be simple enough to pack opposing partisans into a few districts and create the maximum number of seats for one's own party, faction, or race. A population equality requirement, however, imposed a severe constraint on the ability of redistricters to manipulate outcomes. (Quinn 1984, Ch. 1, 20-32 gives

³This is the implication of the views of U.S. Supreme Court Justices Clarence Thomas and Antonin Scalia, putting together their concurrence in *Holder v. Hall*, 114 S.Ct. 2581 (1994) and their assent to *Miller v. Johnson*, 115 S.Ct. 2475 (1995).

examples of the pre-*Reynolds* situation.) Moreover, the 1965 Voting Rights Act and its subsequent expansion by Congress and the courts forced state officials to pay special attention to the impact of line-drawing on the ability of members of minority groups to elect candidates of their choice, and by the 1990s, some attempted to extend interpretations of the Act to safeguard the ability to *influence* the election of candidates.

A third goal of the paper is to trace the evolution of racial and partisan representation in the state and the connection between them. Which party (if either of them) has been more sympathetic to the claims of ethnic minorities and how has the level and expression of sympathy changed over time? How have “nonpartisan” or at least non-legislative redistricting institutions treated minorities? Would ethnic minorities be better off in the future if reapportionment were removed from legislative control?

Fourth, how have court-ordered and partisan plans differed? This question assumes particular importance because of the strong likelihood of deadlock and litigation in redistricting in California and throughout the country in the post-millennial redistrictings. Are ethnic minorities better off trusting the courts than the legislature? Have court-ordered plans in the past been neutral in their effects on political parties?

The nation’s most heavily populated and culturally diverse state, California has been the focal point of conflict over social and economic policy since the 1960s -- from higher education policy to tax limitation to welfare “reform” to prison building to immigration restriction to affirmative action. But in many ways, the centerpiece of its political battles has been redistricting, an amazingly expensive, seemingly almost continuous conflict that fostered or blighted political careers and, some have said, strongly affected public policy for the nation. What can we learn from the Golden State’s reapportionment wars?

II. THE 1970S: MINORITIES, MAJORITIES, AND MASTERS

A. A “BALANCED AND REPRESENTATIVE PLAN”

The reapportionment struggle of the 1970s so closely paralleled and so directly affected that of the 1990s that the earlier battle deserves detailed attention here. Despite a pro-Democratic redistricting in 1965, when the state faced up to the strict equal population standards that federal courts had imposed after *Baker v. Carr*, Republicans gained a slight majority in the lower house, the Assembly, in the 1968 election. Assuming that his party would retain control in 1970, and would therefore be able to design a partisan reapportionment, Rep. Jerry Lewis of the Elections and Constitutional Amendments Committee drafted a memo outlining Republican plans. “In my judgment,” he proclaimed, “our number one criteria [*sic*] should be a program designed to establish districts in California that will elect the highest possible number of Republicans to the State Legislature and the House of Representatives. A second item for consideration is to include in the plan Democrat [*sic*] districts with sizable majority [*sic*] for those who are measured to be the ‘least effective members’ of the minority party. . . . I believe we have an unusually good opportunity to develop a ‘balanced

and representative plan' which in reality is totally designed for partisan purposes."⁴ Unfortunately for the GOP, the party lost its Assembly majority in the 1970 elections, and Democrats retained a slim majority in the State Senate. To add mortification to defeat, Lewis's revealing memo was left in the Committee files when the Democrats took over. When Lewis gave an especially sanctimonious speech on the floor denouncing the Democrats for engaging in what he termed partisan gerrymandering, Democratic Speaker Bob Moretti whipped out the memo, quoting the pertinent passages, no doubt to Democratic guffaws and Republican chagrin.⁵ In fact, both parties viewed reapportionment as primarily a partisan battle -- the Democrats were just a bit more open about it.

With Ronald Reagan in the governor's chair and thin Democratic majorities in both houses of the legislature and in the congressional delegation, the 1971 redistricting should have been a compromise, an incumbent gerrymander that did not overly advantage or disadvantage either party. It nearly happened that way. In late 1971, Governor Reagan, the Democratic state legislative majority, and the 38 incumbent members of Congress from both parties⁶ had agreed on boundaries for the congressional and State Senate seats and had just settled on a redistricting of the State Assembly when a millionaire Anglo Republican upset a Latino Democrat in a special election. Attracting state and national attention in his effort to become the third Latino in the Assembly, Richard Alatorre was a solid favorite to carry a heavily Democratic, ethnically and culturally diverse district in Los Angeles. Alatorre was derailed, Democrats charged, by a series of "dirty tricks" in a West Coast Watergate campaign managed by the future Los Angeles county chairman of the "Committee to Reelect the President" -- i.e., Richard Nixon. (Kousser 1991, 655-56).

Having won the district, Republicans demanded that it be redrawn to favor the Republican victor. (Waxman 1972.) Outraged Democrats refused, and the deal collapsed when Gov. Reagan refused to pledge to endorse agreements negotiated by Republicans in the legislature. After a stormy confrontation between Reagan and the Republican legislative caucus, Democrats passed their own redistricting bill for the Assembly and the bipartisan bills for the other two bodies on Dec. 20, 1971, Reagan immediately vetoed all of them, and power passed to the State Supreme Court.⁷ Thus, the 20-year partisan battle over reapportionment in California was set off when an attempt by Democrats to increase ethnic minority representation was blocked by Republicans. Partisan and ethnic factors in California reapportionment are inseparably intertwined.

Attorneys representing Latinos and African-Americans filed briefs asking the California Supreme Court to

⁴Reproduced in Lowenstein 1972, vol. II, Exhibit E, and quoted in Brown and Lowenstein 1990, 67-68.

⁵Jerry Gillam, "Assembly Approves Redistricting Plan; Court Test Expected," *Los Angeles Times*, Nov. 24, 1971, 3.

⁶A court-ordered, but not court-designed plan in 1967 had produced a bipartisan incumbent gerrymander for congressional seats. (Mayhew, 1971, 282.)

⁷William Endicott, "Reapportionment Plan Favoring GOP Studied," *Los Angeles Times*, Jan. 5, 1972, I-24 ; "Assembly Democrats Reject Remapping Bid," *ibid.*, Jan. 6, 1972, I-2; Richard Bergholz, "32 Congressmen Petition Court to Overrule Redistricting Veto," *ibid.*, Jan. 7, 1972, I-3; Quinn 1984, ch. 4, 17-20.

reject the legislative plans as ethnically discriminatory, claiming that they protected Anglo incumbents, rather than creating more districts where members of minority groups would have a chance to elect candidates of their choice. Democrats pointed to increased minority opportunities in their original plans, criticized the proposed Republican plans for endangering four of the seven currently minority-held seats in the Assembly, and underlined the extreme partisan nature of the compact-looking Republican plan, which paired or put in marginal seats nearly every Democratic leader in both houses of the legislature. Although Republicans claimed to be creating three new "minority districts," two of them considerably overlapped areas then represented by major Democratic incumbents, pointedly forcing Democrats to choose between Anglo leaders and minority challengers. (Lowenstein 1972; D'Agostino 1972; Quinn ch. 4, 9-10.) In a separate brief, Republican State Controller Houston Flournoy asked the court to adopt the Republican plans, which the legislature had voted down, on the grounds that they provided for more competitive districts.⁸ Brushing aside all of these arguments without so much as a comment, the high court quickly and unanimously issued a ruling that merely carried the redistricting battle over until after the 1972 elections. (*Legislature v. Reinecke*, 10 Cal. 3d 396 (1973).)

Chief Justice Donald Wright, a Reagan appointee, began by jettisoning the only redistricting commission that California has ever had. One portion of the 1926 Farm Bureau Federation Amendment had provided for a Reapportionment Commission composed of certain statewide elected officials, which was to act if the legislature and the governor could not agree on a reapportionment plan. Although the rest of the 1926 Amendment had previously been declared contrary to the U.S. Constitution's Equal Protection Clause (*Silver v. Brown*, 63 Cal.2d 270 (1965)), it was not absolutely clear whether the Commission was so intertwined with the Senate apportionment scheme that it had to die, as well. Reasoning that the 1926 plan was adopted in a referendum as part of a coherent whole, the court ruled that the Commission had to follow the malapportioned Senate into oblivion. It is significant to note that while the case was pending in the Supreme Court, the Republican-dominated Commission was focusing on a plan drafted by Alan Heslop and Thomas Hofeller, the Republicans' chief political consultants on reapportionment, that, the *Los Angeles Times* opined, "would wipe out the Democratic majority in both the Senate and Assembly."⁹

Because the state's population gains entitled it to five more members of Congress than it had had in the 1960s, the court had to decide whether to adopt the legislature's proposed congressional lines temporarily, to

⁸"Minority Groups Ask for Rejection of Bills," *Los Angeles Times*, Jan. 18, 1972, I-18 ; "High Court Asked to Void Democrats' Redistricting Bills," *ibid.*, I-3. Nothing in state or federal law explicitly favors competitive districts. Regression estimates by methods detailed in Kousser 1995, show that had the Republican plan been in effect in 1972, Democrats would probably have won 46 (out of 80) seats in the Assembly, rather than the 51 that they actually carried under the old 1965 lines. Under the Masters' Plan, Democrats would have won only 42 races in 1972. After the extraordinary registration and behavioral shifts in a Democratic direction in 1973-74, all of the plans would have provided for huge Democratic majorities, the Republican plan protecting the most Republican seats, 28.

⁹William Endicott, "Reapportionment Plan Favoring GOP Studied," *Los Angeles Times*, Jan. 5, 1972, I-24; Quinn 1984, ch. 4, 8. Hofeller had drawn the basic plans that the Republicans had presented in the legislature. Controller Flournoy, who advocated the Republican plans before the Supreme Court, was a member of the Reapportionment Commission.

use the lines drawn in 1967 and elect the extra five members of Congress at-large (as some Republicans proposed), or to draw districts itself. Operating under a February 23 deadline for candidate qualifying for the June, 1972 primaries, the court ruled on Jan. 18, one day after the final briefs were due in the case and less than a month after Reagan's veto, that it had no time to draw districts itself and provide for public comment on them. It rejected statewide at-large elections because they would burden candidates with massive expenses and confuse voters by offering them choices for too many offices. Since all 38 incumbent congresspersons had endorsed the legislature's bipartisan plan, the court did, too.¹⁰

Despite uneven population growth that seriously unbalanced the populations across districts, the court ruled that the 1972 State Assembly and Senate elections would be held under the same arrangement as in 1970. Democrats, whose districts had generally lost population or gained less than the more suburbanized Republicans during the 1960s, were satisfied with this ruling, and the Republicans could at least solace themselves with the fact that the court had rejected the Democratic legislature's proposals. Finally, the court gave the legislature further time to cut a deal that would go into effect for the 1974 elections. Otherwise, it would appoint three Appeals Court judges as "special masters" and come up with a program of its own.

Republican Lt. Gov. Ed Reinecke, a rather taciturn member of the now moribund Reapportionment Commission and a man with no previous or subsequent reputation for special solicitude toward minority groups, comically overreacted to the court's opinion. It was the "most shocking instance of poor logic and bad judgment on the part of the Supreme Court I've ever seen in my existence . . . a total copout." The legislature, he declared, had "fragmented" minority communities "for the purpose of perpetuating the liberal Caucasians in office. . . . this is an example of why the people of this country as well as this state took to the streets. They saw there was no relief by working within the system. In fact I must say that today I would join them."¹¹ While avoiding Reinecke's graphically ludicrous hyperbole, Governor Ronald Reagan no doubt evoked similar hilarity in Sacramento watering holes with his comment that "There is only one way to do reapportionment -- feed into the computer all of the factors except political registration. That should not be a part of it." Democrats claimed that the Republican plans would have overturned their majority in the Assembly and guaranteed Republican dominance for a decade.¹²

The legislature then somewhat desultorily resumed its effort at a compromise, the serious action taking place in the closely divided Senate, in which Democrats enjoyed a bare two-seat majority. (See Table 1.) In the 1971 plan, Elections and Reapportionment Committee chairman Mervyn Dymally, the only African-American in the Senate, had solidified his own district, bolstered the black population of a district then represented by an Anglo Democrat, offering blacks the possibility of doubling their numbers in the

¹⁰ Glazer, *et al.* 1987, 694-97, find that California was one of only two states in the country in which there was a significant partisan congressional gerrymander in 1970-72. Democrats, they believe, gained about one seat by it.

¹¹Tom Goff, "Reagan, Reinecke Denounce Court: Legislative Leaders Praise Action," *Los Angeles Times*, Jan. 19, 1972, I-14.

¹²Tom Goff, "Governor Urges Redistricting Plan Without Partisan Politics," *Los Angeles Times*, Jan. 21, 1972, I-3.

Senate during the coming years, and created a district centered in East Los Angeles that was designed to elect the first Latino to the Senate since 1911.¹³ After the Supreme Court decision, the Republicans and nearly half of the Democrats, led by conservative Democrat George Zenovich of Fresno and Republican John Harmer of Glendale, proposed a new alignment that moved Dymally's district east, into the heavily Latino area of East Los Angeles, and reduced the black percentage of the second district that Dymally had drawn from 52% to 27%. The scheme effectively capped combined black and Latino representation in the Senate at one and potentially pitted Dymally against ambitious Latinos in the remaining district. Three Republican Senators stalked out of an Elections and Reapportionment Committee meeting when Herman Sillas, the Chairman of the California Advisory Committee to the U.S. Commission on Civil Rights, charged that the plan was "fathered by racism and nurtured by hate and fear." Before he left, John Harmer denounced the Mexican-American Sillas as "a discredit to his people."¹⁴ Eventually, Zenovich and Harmer strung together a district stretching east from East Los Angeles through Orange and Riverside counties, finally terminating in San Bernardino. Uncharacteristically disregarding political reality, Harmer termed this a "Mexican-American district" despite the fact that it was only 47% Spanish-surnamed in population and no doubt much less in registered voters.¹⁵

¹³Dymally called increased Latino representation "the most pressing political business in California." Quoted in Wilkening 1977, 249.

¹⁴Jerry Gillam, "Reapportionment Plan Favoring Democrats Gains in Assembly," *Los Angeles Times*, Feb. 16, 1973, I-3; "3 GOP State Senators Walk Out of Redistricting Hearing," *ibid.*, Feb. 9, 1973, I-3; Herman Sillas, "Dear State Senators: Whatever Happened to East Los Angeles? (It's Missing)," *ibid.*, Feb. 21, 1973, II-7. The quoted phrase is as reported by Sillas.

¹⁵"Senators Deadlock on Latin Districting Plan," *Los Angeles Times*, Mar. 23, 1972, I-2; "Senate Panel 'Packed' in Surprise Maneuver," *ibid.*, Mar. 29, 1972, I-21; Tom Goff, "'Bipartisan' Redistricting Plan OK'd by State Senate 25 to 13," *ibid.*, May 24, 1973, I-3; Lowenstein 1972, I, 14-15.

TABLE 1:
THE PARTISAN BALANCE AMONG LEGISLATORS IN CALIFORNIA,
1970-94 ELECTIONS

ELECTION YEAR	ASSEMBLY		SENATE		CONGRESS	
	D	R	D	R	D	R
1970	43	37	21	19	20	18
72	51	29	22	18	23	20
74	55	25	25	15	28	15
76	57	23	26	14	29	14
78	50	30	26	14	26	17
80	47	33	21	19	22	21
82	48	32	23	17	28	17
84	47	33	25	15	27	18
86	44	36	24	15*	27	18
88	47	33	24	15*	27	18
90	48	32	24	15*	26	19
92	48	32	22	13**	30	22
94	39	41	21	17***	27	25

* One Independent

* *Two Independents and three vacancies

*** Three Independents

Source: *California Journal*, selected issues, 1970-94.

B. THE MASTERS' PLAN: "FLAGRANT DEMOCRATIC GERRYMANDERING"?

The Assembly deadlocked until the State Supreme Court appointment of three Special Masters in May, 1973 pressured the lower house into passing a bipartisan plan which, despite overwhelming support from incumbents of both parties, was vetoed (again) by Gov. Reagan.¹⁶ The three Masters were all retired Anglo judges, two Democrats, Harold F. Collins of Los Angeles and Alvin E. Weinberger of San Francisco, and one Republican, Martin J. Coughlin of Los Angeles. All had been appointed to their highest judicial positions by Democratic Governor Pat Brown, though two had originally been selected for judgeships by Republican Governor Earl Warren. (*California Journal* 1973.) No one seems to have noted publicly the absence of any minorities or women on the panel. Because of past discrimination, of course, there were few or no retired black, Latino, or female judges at the time. In hearings before the Masters, however, representatives of black, Latino, and women's groups denounced the revised legislative plans as incumbent gerrymanders and urged more attention to minority groups and less to incumbents, especially in the Senate.¹⁷

Unveiled in September, 1973, the plans, which were actually drawn by the Masters' staffers, law professor Paul McKaskle and political scientist Gordon Baker, appeared likely to decimate incumbents, especially in the Senate, placing the homes of 29 members of the Assembly (18 Democrats and 11 Republicans) and 18 Senators (10 Democrats and 8 Republicans) in districts that contained at least one other incumbent. (Wilkening 1977, 401-02.) They also substantially increased the possibilities for minorities in the Senate, returning, in effect, to Dymally's proposed configuration in Los Angeles and securing recently won Assembly seats for blacks and Latinos.¹⁸ (See Table 2.) Popular accounts seemed to indicate that the Masters' plans also improved the opportunities for ethnic minorities in the other two bodies. "Mexican Americans and blacks are the winners and long-entrenched incumbent legislators are the losers in a state Supreme Court-sponsored reapportionment that could make major changes in California politics," began the lead story in the *Los Angeles Times*. Herman Sillas exuberantly announced "It's a great day," while Stephen Reinhardt, vice chairman of the California state advisory committee to the U.S. Commission on Civil Rights, called the plan "outstanding, particularly because it attempts to provide more representation for racial minorities."

¹⁶"The Job of Reapportionment," *Los Angeles Times*, Nov. 13, 1972, II-8; "Jerry Gillam, "Assembly Remapping Plan Shelved by Democrats; GOP Lies Charged," *ibid.*, Mar. 9, 1973, I-3; "Pact Near on Redistricting of Assembly," *ibid.*, May 11, 1973, I-28; Tom Goff, "Assembly Redistricting Bill OK Seen by Moretti," *ibid.*, May 19, 1973, I-3; Jerry Gillam, "Assembly Approves Reapportionment Proposal 63 to 12," *ibid.*, May 18, 1973, I-1; "Reagan Urged to Veto Bill on Redistricting," *ibid.*, May 26, 1973, I-22; Jerry Gillam, "Assembly Reapportion Plan Hit by Veto Threat," *ibid.*, June 13, 1973, II-1; Gillam, "Last-Chance Reapportionment Plan Given to Reagan; Veto Expected," *ibid.*, June 15, 1973, I-3; Tom Goff, "State Reapportionment Plan Vetoed by Reagan," *ibid.*, June 28, 1973, II-1; "Senate Democrats Fail to Override Reagan's Veto of Redistricting Bill," *ibid.*, June 29, 1973, I-3; *California Journal* 1972.

¹⁷Richard Bergholz, "State Supreme Court Preparing Its Own Reapportionment Plan," *Los Angeles Times*, June 19, 1973, II-1.

¹⁸Daryl Lembke, "Panel Submits Remapping Plan to California Supreme Court," *Los Angeles Times*, Sept. 1, 1973, I-1.

Editorially, the *Times* announced that "The recommendations would end the practice of gerrymandering Mexican-Americans, blacks and other minorities into ethnic voting pockets in order to dilute their political effectiveness . . . The masters' plan is particularly attractive because it redresses the wrong done for so long to Mexican-Americans and other minorities."¹⁹ In fact, African-Americans had increased their representation in the Assembly in 1972 from five to six, and Latinos, from two to five, and that election produced a second black Member of Congress, as well. (*California Journal* 1972a.) In the Senate and in the Congress, the McKaskle boundaries were more favorable to minorities than the bipartisan lines drawn by the 1973 legislature had been, although in the Assembly, the number of members of minority groups elected actually decreased after the 1974 election, as Ray Gonzales of Bakersfield went down to defeat.²⁰

¹⁹Bill Boyarsky, "Redistricting Plan: New Faces in '74," *Los Angeles Times*, Sept 3, 1973, I-1; Daryl Lembke, "High Court Hears Complaints on Computerized Remap Plan," *ibid.*, Oct. 31, 1973, I-3; "Finally: Sensible Reapportionment," *ibid.*, Oct. 30, 1973, II-6.

²⁰A systematic comparison of the "Spanish heritage" population in the congressional districts drawn by the Democrats and the Masters indicates no substantial differences. The Masters packed Latinos into Edward Roybal's district, the only one that elected a Latino before 1982, leaving slightly smaller populations to influence surrounding districts than the Democrats provided. Thus, the Democrats drew three districts in which the population was 35% Latino or more, and two more in which the proportion was 25%, while McKaskle drew only two over 35% and one more that was 26%. In practical political terms, there was little difference between the two plans. I have not located ethnic percentages for voters in Senate or Assembly districts.

TABLE 2

Ethnic Minority Legislators in California, 1970-1994

ELECTION	ASSEMBLY			SENATE			CONGRESS		
YEAR	B	L	A	B	L	A	B	L	A
1970	5	2	1	1	0	1	1	1	0
72	6	5	1	1	0	1	2	1	0
74	6	4	1	2	2	1	3	1	1
76	6	4	1	2	2	1	3	1	1
78	6	3	1	2	3	1	3	1	1
80	6	4	0	2	3	0	4	1	2
82	6	4	0	2	3	0	4	3	2
84	6	4	0	2	3	0	4	3	2
86	6	4	0	2	3	0	4	3	2
88	7	4	0	2	3	0	4	3	2
90	7	4	0	2	3	0	4	3	2
92	7	7	1	2	3	0	4	4	3
94	7	9	1	2	4	0	4	4	3

Source: *California Journal*, selected issues, 1970-94, and Professor Fernando Guerrero, personal communication, June 22, 1993.

The partisan consequences of the McKaskle-Baker plan were even less clear. Apparently a glance at 1970 registration totals and the numbers of the new districts that would have been carried by the 1970 candidates for Governor and U.S. Senator²¹ convinced the Masters and their staff that their plan was "neither politically unfair nor unfair to incumbents, but may result in fewer 'safe seats' and more 'competitive seats'." Yet seven

²¹Tables of these figures, but no further analyses, are in the Masters' files at the Institute for Governmental Studies, University of California, Berkeley.

years later, former Democratic Assembly Speaker Jesse Unruh remarked that "There was a hell of a lot more flagrant Democratic gerrymandering (in the court plan) than I ever would have had the guts to do in my most arrogant moment."²² Blessed with less hindsight, the Speaker in 1973, Bob Moretti, predicted that Democrats would win 45 to 49 of the 80 Assembly seats under the proposal, while GOP Assembly Floor Leader Bob Beverly thought it gave Republicans a good chance to take control of the body. Democratic Congressman Phil Burton pronounced the Masters' congressional districts "fair, just and equitable. This plan unites more communities than ours did and eliminates the dilution of the minority group vote." But similarly cheery was Gordon Luce, the chairman of the Republican State Central Committee, who declared the plan "an enormous improvement over the gerrymander advanced by the Democratic leadership in the Legislature." An editorial writer for the *Los Angeles Times* went so far as to suggest that the Masters' Plan might represent "the death of gerrymandering."²³ The knowledgeable editor of the *California Journal*, Ed Salzman, predicted only one or two seat changes in the party balance in each legislative body and calculated that only about 10 of the 163 incumbents in the Assembly, Senate, and Congress would lose their seats as a result of the redistricting.²⁴

Because they did not have to obtain majorities of the legislator, the support of the Governor, and at least the acquiescence of members of Congress, the McKaskle-Baker districts were certain to look more regular than the legislators' districts on a map that contained neither geological nor sociological features -- which was how they were usually presented to the public. The bitter clashes of self-interest, partisan interest, and ideological interest that deeply divide California politicians can only be compromised in reapportionment by drawing oddly-shaped districts.²⁵ Moreover, the 20th century American media's habitual scorn for politicians and the "scientific" mystique that surrounded computers in the early 1970s also helped to insure an enthusiastic public response for the court-ordered scheme. Thus, the *Times* reported that at a hearing on the proposal, politician-complainants were "fighting for their political skins," against McKaskle-Baker, which was "Devised by feeding population data into a computer . . ."²⁶ These images of squarish districts

²²Daryl Lembke, "Panel Submits Remapping Plan to California Supreme Court," *Los Angeles Times*, Sept. 1, 1973, I-1; Richard Bergholz, "A Challenge: Fair Plan for Redistricting," *ibid.*, Dec. 7, 1980, I-3.

²³Tom Goff, "Can Find No Reason to Oppose Panel Remapping Plan --- Moretti," *Los Angeles Times*, Sept. 6, 1973, I-3; Paul Houston, "State Redistricting Plan Perils 4 Congressmen," *ibid.*, Sept. 9, 1973, I-3; Bill Boyarsky, "Redistricting Plan: New Faces in '74," *ibid.*, Sept. 3, 1973, I-1; "The Death of Gerrymandering?" *ibid.*, Sept. 5, 1973, II-6.

²⁴Salzman 1973. Similarly, Richard Bergholz of the *Los Angeles Times* predicted that Democrats would win 20-23 seats in Congress, 18-22 in the Senate, and 44-51 in the Assembly. Bergholz, "Both Parties Optimistic Over Redistricting Plan: Democrats Expect to Retain 23-20 Margin in Congress: GOP Sees Chance to Narrow Gap," *Los Angeles Times*, Nov. 29, 1973, I-1.

²⁵Tom Goff, "State Remapping Appears Headed Back to Courts," *Los Angeles Times*, Mar. 21, 1972, I-3.

²⁶Daryl Lembke, "High Court Hears Complaints on Computerized Remap Plan," *Los Angeles Times*, Oct. 31, 1973, I-3.

mechanically drawn by supposedly disinterested technicians who were insulated from the pressures of politics or publicity were to recur repeatedly over the next two decades -- pristine technocracy, as opposed to the messy, imperfect compromises that characterized the legislative process. It is one of the ironies of the late twentieth century that citizens of the world's foremost democratic country put so little trust in the officials they elect, have so little understanding of the process by which laws are made, and accept so readily the intervention of unknown and unaccountable "experts" in making fundamental policy.

When the districts were drawn in the summer of 1973, no one could have foreseen that by the time of the 1974 elections, the oil price shock would rumble through the economy, producing a sharp recession, and that President Nixon would resign and be pardoned in the aftermath of a scandal that would severely damage the reputation of the Republican party. The result was a dramatic victory for the Democrats in the nation generally and in California, in particular. In the Assembly, Democrats made a net gain of seven, giving them their largest majority since 1877. In the Senate, they won 17 of 20 of the four-year seats up for election in 1974, raising their total by a net of three. In the Congress, Democrats picked up five seats in what state Democratic party chair John Burton called a repudiation of "the party of Watergate." Suggesting in November, 1973 that the Masters' Plan had reduced partisan margins in seats across the state, Michael Berman, a Democratic political consultant and staffer of the Assembly Elections and Reapportionment Committee, had predicted a 30-seat turnover in the Assembly. Although the Democratic surge probably reduced the carnage, there were 23 new members of the Assembly elected in 1974.²⁷ To what degree was the Democratic triumph the result of redistricting, and to what degree, of other factors? How well would each party have done under the 1972, rather than the 1974 boundaries?

One way to answer this question is provided by *Congressional Quarterly* retabulations of the results of the 1968, 1970, and 1972 congressional elections using the McKaskle-Baker boundaries. (*Congressional Quarterly* 1974.) In 1968, Democrats actually won 21 of the 38 districts. If those votes had been cast in the 43 districts drawn by the Masters, Democrats would have won only 19, while Republicans would have carried 24. In 1970, Democrats won 20 of 38 seats (52.6%), and would have been victorious in 23 of 43 (53.5%) under the Masters' plan.²⁸ In 1972, Democrats won 23 of the 43 under the bipartisan proposal put into place temporarily by the state Supreme Court; they would have won 25 under the Masters' plan. In the actual election of 1974, Democrats won 28 congressional seats. By this measure, then, the Masters' districts probably gave the Democrats at most one or two congressional seats, compared to the districts drawn by Democratic-majority legislatures in 1965 for the Assembly and Senate and in 1971 for Congress, while the

²⁷Daryl Lembke, "Court Orders State Remapping, Ignores Factor of Incumbency," *Los Angeles Times*, Nov. 29, 1973, I-1; Kathy Burke, "Rep. Burton Predicts Democratic Landslide," *ibid.*, Aug. 29, 1974, II-2; Robert Shogan, "GOP Founders in Riptides, Watergate, Pardon, Economy," *ibid.*, Nov. 5, 1974, I-1; George Skelton, "Democrats Take 72 of 100 Races," *ibid.*, Nov. 7, 1974, I-1; William Endicott, "State's Democrats Add Four Seats in Congress," *ibid.*, Nov. 7, 1974, I-3.

²⁸*Congressional Quarterly* (1973) also retabulated the 1970 results by the 1972 districts. If the 1970 election had been held within the 1972 boundaries, Democrats, by this measure, would have won 22 of the 43, one less than under the 1974 boundaries.

Watergate scandal and the recession accounted for two or more of the five-seat gain.

A second approach to the question is to place the 1972 and 1974 elections in the context of general trends over the whole period from 1970 to 1994. Figures 1 and 2 illustrate several aspects of these trends for congressional and Assembly races, tracking differences in party registration and estimates of the margin between Democratic and Republican candidates in hypothetical districts where the party registration was that in an average district, a district where 55% of the total registrants were Democrats and 40% were Republicans, and one where the proportions were 55% and 38%.²⁹ (The Figures will be discussed again at later points in this paper.)

1974 was certainly a landslide year for the Democrats. In a district where the registration was 57.5% Democratic and 35.5% Republican, the average Democratic vote margin was 22% in Congressional and 18% in Assembly races -- an increase from 9% and 12%, respectively, in 1972. Similarly, Democratic margins more than doubled from 1972 to 1974 in hypothetical 55/40 and 55/38 districts. These results suggest that the effects of the Watergate, recession, and pardon issues spilled over into Assembly contests and that they outweighed line-drawing in their importance for the 1974 results.

(Figures 1 and 2 about here)

A third approach, explained in detail in Kousser 1995, implies that Democrats might have done even better if the 1972 lines had been in effect in 1974 and for the rest of the decade. Using methods somewhat more sophisticated than, but essentially similar to those that produced the results for hypothetical districts in Figures 1 and 2, I estimate how well the candidates of each party would have fared in 1972 if the relationships between registration by party and the vote had been the same as they were in 1974. Conversely, I estimate how many seats each party would have won in 1974 if the relationships between registration and voting had been the same as those in 1972. If voters had behaved as they did in 1974, but the 1972 lines (and patterns and levels of party registration) had been in effect, my estimate is that the Democrats would have won 30 congressional seats, instead of 23. Had they behaved as in 1972, but within the 1974

²⁹The Senate is omitted because the small number of elections (its terms are for four years) makes it less predictable. Total registration, rather than two-party registration is used because the percentages of third-party or no-party registrants differ considerably in size and behavior from district to district. The 55% Democratic and/or 38-40% Republican rule of thumb for competitive seats is repeatedly mentioned. See, e.g., Way 1962, 253; Salzman, 1974; D'Agostino 1972, 3. In the 1972 congressional contests, Democrats lost only 3 districts that were 55% or more Democratic, and Republicans lost only one that was 38% or more Republican; in the Assembly, the analogous figures were eight and ten. In 1981, a report in the *Los Angeles Times* highlighted Senate districts that were 55% and above Democratic and remarked that "Republicans can win in districts where their registration is as low as 40%." Claudia Luther and Jerry Gillam, "Democrat in State Senate Unveil Redistricting Plan," *Los Angeles Times*, Sept. 3, 1981, I-1. By 1991, an insider newsletter called a district "safe" for the Democrats if it was 54% or more Democratic, and safe for the Republicans if it was 40% or more Republican. Dick Rosengarten, *Calpeek: California Political Week*, 13, #45 (Dec. 9, 1991), 3. The 38% rule is referred to in Daniel M. Weintraub, "Incumbents Come First in Redistricting, Speaker Says," *Los Angeles Times*, Aug. 30, 1991, A-3; Weintraub, "Remap Plans Would Add 4 House Seats in Southland," *ibid.*, Sept. 12, 1991, A1. Edmond Costantini and Charles Dannehl, "Party Registration and Party Vote: Democratic Fall-Off in Legislative Elections," *Legislative Studies Quarterly*, 18 (1993), 33 indicates that a district in which the Democratic percentage of the two-party registration in California legislative races from 1972 through 1990 was 56% would be rated a "virtual toss-up."

boundaries, they would have won 29, instead of 28.³⁰ The Assembly results are similar. In actuality, Democrats won 51 and 55 seats in the November, 1972 and November, 1974 elections. Had the lines been those of 1972 and the behavior that of 1974, Democrats would have won 57 seats; in the opposite case, 58.³¹

³⁰These estimates, of course, do not allow for the idiosyncracies of individual campaigns. If one uses the regressions for 1974 and computes the number of districts that the Democrats "should" have carried on the basis of party registration alone, the result is 33. In other words, the estimate in the text of 29 seats in 1974 if the behavior pattern had been that of 1972 is actually 4 seats less than the estimate if the 1974 behavior pattern and the 1974 districts are used.

³¹Again, the estimates from same-year regressions show higher numbers than the actual numbers of Democratic victories -- 54 and 62, respectively. It should also be noted that the "1972" lines for the Assembly were actually those adopted in 1965, which were kept in effect for 1972 by the State Supreme Court.

Table 3:
What If Voters Had Behaved as in 1972,
But in the 1974 Districts, and Vice Versa?

Boundaries in Effect	Behavioral Pattern*	
	1972	1974
Panel A: Congress		
1972	23**	29
1974	30	28
Panel B: Assembly		
1972	51	58
1974	57	55

*Patterns are the regression relationships estimated from the rows for 1972 and 1974 , respectively, in Table 1, Kousser, 1995

**Number or estimated number of Democratic victories

A fourth approach is to compare the degree of "packing" of Democrats and Republicans into overwhelmingly partisan districts in 1972 with that at the time that the Masters' districts were announced in 1973.³² Although any definition of "packing" is time-bound and somewhat arbitrary, let us define one empirically. In 1972, Democrats won every congressional district that was 36% Republican or less (to the nearest percentage point) and lost every one that was 39% Republican or more. In the Assembly in 1972,

³²The Masters' papers at the Institute for Governmental Studies, University of California, Berkeley, indicate that they aggregated only the 1970 registration figures into their districts. A comparison of these with partisan registration margins in the actual 1970 Assembly districts, using the same technique as in figures 3-7, below, shows almost no difference in competitiveness between the Masters' Plan and the 1965 legislature's plan. A similar comparison, using 1973 data, between the Masters' Plan and Senate Bill 195, the compromise that was vetoed by Gov. Reagan in 1973, similarly demonstrates no visible differences within the competitive range of districts.

Democrats won 39 of the 41 districts that were 36% Republican or less, and lost 24 of the 33 districts that were 39% Republican or more.³³ Suppose we allow for some uncertainty by defining relatively "safe" districts at the time as 34% Republican or below, and 41% Republican or above. Then the number of safe Democratic districts in the Masters' plan was 36 in the Assembly, while the number in 1972 was 33; and the numbers of safe Republican districts were 23 and 27, respectively. In the Congress, the numbers of safe Democratic districts were 17 and 18, while the numbers of safe Republican districts were 14 and 17. By these definitions, the Masters' plan had about the same number of "competitive" districts in the Assembly as the previous plan had, but McKaskle-Baker was somewhat more favorable to Democrats than the scheme that it replaced. For Congress, McKaskle drew four more competitive districts and three fewer safe Republican ones.

Overall, then, three retired judges who had been appointed by a Democratic governor, superintending a redistricting by a former poverty lawyer (McKaskle), produced lines that were very similar in their prospective effects to districts that had been drawn by legislatures containing Democratic majorities.³⁴ It is not surprising, then, that after 1974, Assembly Democratic leaders believed that the courts would not deal with them unfairly, especially if advised by McKaskle.³⁵

³³As Kousser 1995, Table 1 shows, election outcomes are considerably more dependent on the level of Republican than of Democratic registration.

³⁴More informal analyses come to the same conclusion. Butler and Cain 1992, 37; Quinn 1984, ch. 4, 73-74.

³⁵It would be going too far, however, to agree with *California Journal* editor Ed Salzman, who announced in June, 1974 that "With hindsight, it is easy to see that the Republican Party would have been better off with any of the various compromise reapportionment plans developed by the Legislature." (Salzman 1974.) Similarly (and contradictorily) Quinn Chapter 4, 58, 65, states that Republicans would have won "far more seats" under the 1973 compromise districts than under the McKaskle Plan, but also that McKaskle's lines "did not favor one party or another." Since the compromise congressional proposal was almost exactly the same as that used for the 1972 elections, it seems nearly certain that Democrats would have been at least as well off with the 1972 as with the McKaskle lines. Gov. Reagan and his advisers correctly recognized their partisan interest in not compromising with the legislature in 1971-73, swapping a certain disadvantage for an unknown one.

III. THE 1980S: THE "BURTON GERRYMANDER" AND ITS CONSEQUENCES

A. BURTON, BERMAN, AND THE TWO ROSES

As the next round of redistricting approached, the political situation in California had changed considerably. Six percent fewer voters registered with one of the two major parties in 1980 than in 1972, and the volatility of voters and their tendency to split tickets rose with the amount of political independence. Although Democrat Jerry Brown had replaced Republican Ronald Reagan as governor and the Democrats still held the edge in both houses of the legislature and the state's congressional delegation, their majorities had been much reduced by the reverberations of the Proposition 13 (property tax reduction) campaign in 1978 and the electoral thunder of Ronald Reagan's presidential campaign in 1980. After the 1976 election, the numbers of Democratic seats in the Assembly, Senate, and Congress, respectively were 57, 26, and 29; after the 1980 election, 49, 21, and 22. While Republicans wished to lock in their recent gains with favorable district lines, Democrats wanted to reclaim several close districts that they had previously controlled. The Democratic majority on the State Supreme Court was more solid, 6 to 1, but Republicans had already backed an almost-successful campaign against the state's first female Chief Justice, Rose Bird, three of the Jerry Brown-appointed Justices were subject to voter rejection on the 1982 ballot, and Republicans hoped that threatened judges would veto any partisan Democratic reapportionment. If all else failed, Republicans believed that they might be able to cut a deal with the Democrats. It was this last belief that so inflamed the fight for the Assembly Speakership.

Since Jess Unruh modernized the California legislature during the 1960s, the Speaker has been the state's second most powerful official, centrally coordinating fundraising and campaign planning, controlling the agenda and appointing all committee chairs in the Assembly, doling out or denying perquisites, and using these powers to foster or blight legislation and careers.³⁶ (Crouch *et al.* 1967, 137-38.) Because the Speaker is elected by the members of the Assembly and can theoretically be replaced at any time, she must particularly concerned with redistricting. In 1980, Republicans were frantic over the prospect that Howard Berman might become Speaker and his brother Michael might be in charge of reapportionment.³⁷

³⁶ Crouch *et al.* 1967, 137-38.

³⁷A political organizer from the age of 16, Michael Berman managed his first successful Assembly campaign, an upset of a 26-year Assembly incumbent, before he was 21 years old. With his brother and the victor in the upset, Henry Waxman, Michael became the core of what eventually became known as the "Berman-Waxman Machine," which was in fact a loose grouping of Jewish, African-American, and Latino liberal Democratic politicians in Los Angeles. Waxman chaired the Assembly Elections and Reapportionment Committee in 1971, and Michael was a consultant to that committee. W.B. Rood, "Michael Rows the Boat for Berman." *Los Angeles Times*, Jan. 28, 1980, I-3. On Republican fears, see Claudia Luther, "Democrats Get Slow Start on Redistricting," *ibid.*, March 8, 1981, I-3.

In 1974, Assemblyman Leo McCarthy of San Francisco, with the help of the Bermans, had challenged Bob Moretti as Speaker and beaten Willie Brown of San Francisco for the post after Moretti dropped out of the contest. Howard Berman had become Majority Leader, with the promise of ascending to the Speakership eventually. By 1979, Berman, chafing at being second in command, challenged McCarthy directly, winning 27 of 50 votes in the Democratic caucus. At this point, bitter McCarthy supporters refused to solidify behind Berman on the Assembly floor, Assembly Republicans refused to vote for either side, McCarthy retained his position, and the battle was put off until after the 1980 elections. In those elections, McCarthy and Berman actively supported different Democratic candidates, Berman's allies won more seats, and McCarthy dropped out of the race, but threw his support to his former enemy Willie Brown. When five Democrats defected from Berman and the Democratic caucus deadlocked, the Assembly Republican leadership decided to vote for Brown in return for veto power over Republican committee assignments and a rather vague promise of partisan fairness in redistricting.³⁸

Republicans deployed four more weapons during the 1981 reapportionment. Although attempts during the 1970s to set up a reapportionment commission had failed, Republicans and nonpartisan "good government" supporters had successfully backed a toothless initiative in June, 1980. Proposition 6 required all public bodies to pay attention to contiguity and city, county, and regional boundaries during reapportionment, but never defined these terms, provided no method of enforcement or advice on how to resolve contradictory objectives, and contained no protections for ethnic minorities.³⁹ Republican businessmen also financed a computerized reapportionment center at the Rose Institute of Claremont McKenna College in Southern California. Led by Alan Heslop and Tom Hofeller, two veterans of the Republican redistricting efforts of 1971, Rose invited Latinos to use their facilities without charge in hopes that their push for more Latino representation would at the least embarrass Democrats, and at the most, reduce the overall number of Democratic seats. Although Hofeller denied that Rose was "a Republican appendage," Assembly Republican Minority Leader Carol Hallett announced long before any proposed reapportionment was produced that "The Rose Institute plan (whenever it emerges) is a Republican plan."⁴⁰ Among the Democrats whose districts the

³⁸Al Martinez, "Speakership Fight: a Study in Power," *Los Angeles Times*, Feb. 19, 1980, I-3; Claudia Luther and Robert Fairbanks, "Willie Brown Vies for Speaker's Post," *ibid.*, Nov. 21, 1980, I-3; "Chicanos Take Plea to Capital," *ibid.*, Dec. 1, 1980, II-4; Claudia Luther and Tracy Wood, "Willie Brown New Assembly Speaker," *ibid.*, Dec. 2, 1980, I-1; Kenneth Reich, "Reapportionment: L.A.'s Time to Pay the Piper," *ibid.*, Jan. 4, 1981, II-1; Claudia Luther and Jerry Gillam, "2 Redistricting Plans Advance in Legislature," *ibid.*, Sept. 12, 1981, I-1; Luther, "Speaker's Crown Firmly Affixed," *ibid.*, Sept. 28, 1981, I-3. After Brown proved less nonpartisan in redistricting than they had hoped, Republicans tried -- unsuccessfully -- to play Howard Berman off against the Speaker. Quinn, ch. 5, 48-50.

³⁹Art. XXI, Sec. 1, State Constitution; *California Journal*, 1972a; Walter A. Zelman, "It's Time to Defeat Rep. Gerry Mander," *Los Angeles Times*, April 20, 1979, II-7; "Fairer Apportionment: Yes on 6," *ibid.*, May 16, 1980, II-6; Richard Bergholz, "New Lines: Both Parties Are Worried," *ibid.*, Jan. 4, 1981, I-1.

⁴⁰Richard Bergholz, "New Lines: Both Parties Are Worried," *Los Angeles Times*, Jan. 4, 1981, I-1; Henry Mendoza, "Latinos Backed on Political Concern," *ibid.*, Feb. 1, 1981, II-4; Claudia Luther, "Latinos Warn on Reapportionment," *ibid.*, Feb. 21, 1981, II-1; Richard Santillan, "For Chicanos, a Louder Voice," *ibid.*, March 5, 1981, II-7; Claudia Luther, "Latinos

Rose plan ultimately splintered was Speaker Willie Brown - not a move aimed at conciliation.⁴¹ The third weapon, the threat of legal suits, finally proved no more efficacious than the previous two, while the fourth, a statewide referendum on accepting or rejecting the Democrats' plans, ultimately proved to be a pyrrhic victory for the GOP, as we shall see below.

Minority legislators had more power in shaping a reapportionment plan that was ultimately put into effect in 1981 than at any other time in California's history. In 1971, Mervyn Dymally had been head of the Senate Elections and Reapportionment Committee, but Gov. Reagan had vetoed his plan, a conservative coalition had taken control of the committee, Reagan had vetoed even their effort, and the Masters' plan had superseded everything anyway. Ten years later, Assemblyman Richard Alatorre, who had been pledged to Howard Berman in the Speakership contest, went over to Willie Brown and was named chairman of the Assembly Elections and Reapportionment Committee.⁴² Together with the Speaker, an African-American, Alatorre made sure that minority concerns were taken into account in the redistricting of all three legislative bodies. Latino activists also pressured Brown and Alatorre, openly threatening to join Republicans in court if reapportionment plans disappointed them, storming out of committee hearings, and even sitting in at the Speaker's office.⁴³

The actual districts that were drawn for the Congress and the Assembly satisfied blacks, delighted Latinos, and reassured Democratic politicians. Comprising a relatively stable proportion of the population and heavily concentrated geographically, African-Americans from California were already represented proportionately in all three bodies, and the new lines threatened no black incumbent or major aspirant.⁴⁴ Latinos, angered because the State Senate plan did not create another Latino district in Los Angeles, were, however, "pleasantly surprised . . . shocked favorably" by Alatorre's concentration of Latino areas into potential "influence districts" for the State Assembly and pleased that the number of Latinos from California in

May Get Little in Redistricting," *ibid.*, April 30, 1981, I-3; Jerry Gillam, "Latinos Seek New Assembly District," *ibid.*, May 5, 1981, I-23; Kenneth Reich, "Latino Coalition Submits Plan to Increase State Representation," *ibid.*, II-4; Kenneth Reich, "Top Democrats Cool to Reapportionment Plan," *ibid.*, June 17, 1981, I-3.

⁴¹Claudia Luther, "Legislators to Determine Own Survival," *Los Angeles Times*, June 28, 1981, I-3.

⁴²"Chicanos Take Plea to Capital," *Los Angeles Times*, Dec. 1, 1980, II-4; Kenneth Reich, "Reapportionment: L.A.'s Time to Pay the Piper," *ibid.*, Jan. 4, 1981, II-1; Claudia Luther, "Latinos Warn on Reapportionment," *ibid.*, Feb. 21, 1981, II-1.

⁴³Claudia Luther, "Latino Walkout Climaxes Session on Redistricting," *Los Angeles Times*, Aug. 5, 1981, I-21; Luther and Jerry Gillam, "GOP Bloc Threatens to Delay Bills in Rift Over Redistricting," *ibid.*, Aug. 25, 1981, I-3.

⁴⁴Tracy Wood, "Remap Fight Pits Pair of Democrats," *Los Angeles Times*, Dec. 23, 1982, I-3; Wood, "Democrats Seek to Add to Margin in Congress," *ibid.*, Dec. 28, 1982, I-3.

Congress seemed likely to triple under the new boundaries.⁴⁵ The plans also conciliated Howard Berman and his allies Assemblymen Mel Levine and Rick Lehman by tailor-making congressional seats for them, thus simultaneously promoting them and removing them from Sacramento.⁴⁶

Republicans, however, exploded, especially over the congressional plan drawn by liberal Democratic Congressman Phil Burton of San Francisco. Reportedly relying only on a mechanical adding machine, his encyclopedic knowledge of the political proclivities of Northern California, and the expertise on the L.A. area of Michael Berman and Cal State Long Beach Prof. Leroy Hardy, Burton drew irregular districts that punished his particular enemies and protected his friends.⁴⁷ In high dudgeon, one Republican denounced the Burton plan as an "outrageous, blatant, partisan carving up of the people," another likened it to the Jewish Holocaust, while a third, adding one more insensitive religious metaphor, compared Speaker Brown to the contemporary Iranian theocrat, the Ayatollah Khomeini.⁴⁸ Claiming that the Burton redistricting would cost them between six and ten seats in Congress,⁴⁹ the Republicans put a referendum on the June, 1982 ballot that allowed voters to reject the plans for each of the legislative bodies. At the same time, they asked the State Supreme Court and a federal district court to suspend the new district lines and either establish different temporary lines or run the 1982 elections within the districts that had been used in 1980. The GOP also joined with the good government group Common Cause in sponsoring a referendum on a reapportionment commission which, if approved on the November, 1982 ballot, would draw wholly new districts for subsequent elections.⁵⁰

⁴⁵Claudia Luther and Jerry Gillam, "Democrats in State Senate unveil Redistricting Plan," *Los Angeles Times*, Sept. 3, 1981, I-1; Maria L. La Ganga, "Latino Group Urges Veto of Remapping," *ibid.*, Sept. 5, 1981, I-24; Claudia Luther and Jerry Gillam, "Assembly Remapping Plan Unveiled; GOP Vows Fight," *ibid.*, Sept. 9, 1981, I-1; Frank del Olmo, "Latinos Get a Break in Assembly Remapping," *ibid.*, Nov. 5, 1981, II-11. Prof. Bruce Cain became Alatorre's chief redistricting consultant, battling the Rose computers at Claremont McKenna College with the Caltech mainframe, twenty miles down the road. From the beginning, the focus of this bitter rivalry was on Latinos, whom both sides sought to woo and use.

⁴⁶Claudia Luther, "Speakers' Crown Firmly Affixed," *Los Angeles Times*, Sept. 28, 1981, I-3.

⁴⁷Butler and Cain 1992, 42; Ellen Hume, "Plan to Ensure Congress Seat for Latino May Be Backfiring," *Los Angeles Times*, April 18, 1982, II-1; Quinn 1984, ch. 5, 14-25.

⁴⁸Claudia Luther and Jerry Gillam, "2 Redistricting Plans Advance in Legislature," *Los Angeles Times*, Sept. 12, 1981, I-1; Luther and Gillam, "3 Plans for State Redistricting OKd," *ibid.*, Sept. 16, 1981, I-1.

⁴⁹These guesses imply that what the Republicans considered a "fair" redistricting would have produced Republican majorities in the congressional delegation ranging from 27-18 to 31-14, a rather audacious claim in a state where Democratic registrants outnumbered Republican by 55%-33% in 1980.

⁵⁰George Skelton, "GOP Opens Drive for Remapping Measure," *Los Angeles Times*, Sept. 23, 1981, I-3; Claudia Luther, "GOP to Aid Remapping Reform Bid," *ibid.*, Dec. 6, 1981, I-3; Charles Maher, "GOP Congressmen Ask Judges to Remap State," *ibid.*, Dec. 15, 1981, I-3; Claudia Luther, "Court Views Choices in Districting Battle," *ibid.*, Jan. 12, 1982, I-3; Luther and Richard Bergholz, "Campaign Launched for Remap Initiative," *ibid.*, Feb. 3, 1982, I-3.

As in 1971, the State Supreme Court unanimously decided to put the new congressional districts into effect immediately, because otherwise, the two additional members of Congress would have to be selected at-large, which was illegal under a 1967 federal law. But unlike the case decided a decade earlier, the court also ruled that the 1982 elections for the Assembly and the Senate should be held in the new districts. For a four-three majority, Chief Justice Rose Bird wrote that to use the old, by now severely malapportioned districts would violate the equal population requirement that courts had ruled to be implicit in the federal and state constitutions. She rejected Republican arguments that even though both houses of the legislature had passed the measures and Gov. Jerry Brown had signed them, they should not be considered enacted until the electorate had had a chance to veto them -- as Governor Reagan had vetoed the 1971 lines -- in the first initiative on a particular redistricting plan in the state's history. Republicans responded by threatening to join an ongoing recall effort against the four Jerry Brown-appointed members of the court, and the party did oppose three of them in the November election.⁵¹ In the federal court, Republican moves for a temporary injunction against the plans on the grounds that they favored the Democratic party, that they had not yet been precleared by the U.S. Department of Justice, and that shifts in Senate lines would prevent some voters from selecting senators for six years were unceremoniously rejected.⁵² The GOP was more successful in the June referendum, as voters objected to each of the Democratic plans by margins of 62-65%, setting the stage for a vote on a redistricting commission.⁵³

Written by Republican activist and attorney Vigo Nielsen, Jr. and backed by Common Cause -- and \$400,000 from the state Republican party -- the complicated 10-person commission plan appeared, on the surface at least, so carefully balanced between the two major political parties that it was likely to result in a bipartisan gerrymander.⁵⁴ (Proponents of the plan, numbered Proposition 14 on the November ballot, did not stress this implication of their handiwork.) Six members were to be representatives of the two major parties selected by partisan caucuses in the Assembly and Senate and by the state party chairpersons. Four

⁵¹Philip Hager, "Court Backs Remapping Plan and Ballot Challenge," *Los Angeles Times*, Jan. 29, 1982, I-1; Richard Bergholz, "GOP Will Take Aim at Ruling on Redistricting," *ibid.*, Feb. 1, 1982, I-3; Philip Hager, "GOP-Backed Group Begins Drive to Unseat Justices Named by Brown," *ibid.*, Sept. 30, 1982, I-3; election returns, *ibid.*, I-16; Salzman, 1982a. The insider view of the Republicans' chief redistricting consultant for the Assembly in 1981 makes it clear that it was this decision, not those concerning capital punishment, that really motivated the Republican leadership of Bird's eventually successful recall. (Quinn 1984, ch.5, 78.)

⁵²Claudia Luther, "GOP Renews Challenge on Redistricting," *Los Angeles Times*, Feb. 9, 1982, I-3; Charles Maher, "Judge Refuses to Stop Remapping," *ibid.*, Feb. 11, 1982, I-16; "Court Denies Districting Plea," *ibid.*, March 23, 1982, I-17.

⁵³Claudia Luther, "Remapping Challenge May Be Just Warm-Up," *Los Angeles Times*, May 10, 1982, I-3; "Election Districts: No, Yes, Yes," *ibid.*, May 21, 1982, II-6; Claudia Luther, "Initiative to Create Redistricting Commission Qualifies for Ballot," *ibid.*, June 22, 1982, I-3.

⁵⁴ Richard Bergholz, "GOP Will Take Aim at Ruling on Redistricting," *Los Angeles Times*, Feb. 1, 1982, I-3. Details on the commission plan are taken from Salzman 1982b.

"independent" members who were, in the words of the initiative, to "bring ethnic, social and geographic diversity to the commission," were to be chosen by a two-thirds vote of the seven most senior justices on the State Court of Appeals.⁵⁵ Since it took seven votes to adopt a plan in the commission, at least one partisan from each side would have to approve any redistricting. If the commission deadlocked, the State Supreme Court had 60 days to draw up a proposal, probably using the commission and its staff as special masters.⁵⁶

While the commission was directed to encourage electoral competition, there was no mention of protection of the rights of ethnic minorities as a goal of its plans -- an omission that Democrats and representatives of minority groups harshly attacked.⁵⁷ The reapportionment commission, said Assembly Democratic caucus leader Don Bosco, "would relegate the most important decision the Legislature makes to a bunch of old, white, upper-middle class men." Just as members of ethnic minorities had finally gained power in the legislature, *Los Angeles Times* editorialist Frank del Olmo and Speaker Willie Brown charged separately, it was proposed to take it away and give it to a body that was not likely to have "the kind of ethnic, racial and sexual balance found in the Legislature." Echoing similar comments by the California Teachers' Association and the State Advisory Committee to the U.S. Commission on Civil Rights, Senate Majority Leader David Roberti noted that "There's less for minorities in the Common Cause plan than there was in the process the Legislature underwent."⁵⁸ While surely self-serving, the Democrats' comments were not untrue. By 1981, ethnic minorities were such an important part of the Democratic coalition, not only in the electorate, but also in the legislative and congressional delegations, that white Democrats had no alternative but to satisfy most of their redistricting demands. No bipartisan or nonpartisan commission offered so certain a prospect of influence.

Attracting only 79% of the number of votes that were cast for Republican George Deukmejian for governor the same day, the commission proposition went down to a stunning 55%-45% defeat. Faced with a tough nationwide campaign in the midst of the highest unemployment since the Great Depression, the

⁵⁵Michael Asimow and Walter Zelman, "Prop. 14: Is It Real 'Reform'?" *Los Angeles Times*, Oct. 10, 1982, IV-3. To guard in another way against partisanship, no more than four of the seven Appeals Court justices who nominated independent commission members could have been members of the same political party at the time that they had been named to the Appeals Court.

⁵⁶This provision would pressure the party that did not have a majority on the Supreme Court to compromise, for fear that if it did not, the Supreme Court would put the commission's plan into effect, anyway. It is noteworthy that the elaborate nonpartisan rules did not apply to the State Supreme Court, which was not prohibited from dividing along party lines or given any nonpartisan guidelines. For other evaluations, see Bill Billiter, "Prop. 14: Election Reform or a Trojan Horse?" *Los Angeles Times*, Oct. 14, 1982, I-C-1.

⁵⁷The national Common Cause "Model State Constitution" and statutory provisions also included no protections for ethnic minorities. (Adams 1977.)

⁵⁸Claudia Luther and Richard Bergholz, "Campaign Launched for Remap Initiative," *Los Angeles Times*, Feb. 3, 1982, I-3; "Civil Rights Panel Opposes Redistricting Commission," *ibid.*, Oct. 15, 1982, I-11; Frank Del Olmo, "Prop. 14 Endangers Latinos' Gains," *ibid.*, Oct. 28, 1982, II-11.

Republican National Committee reneged on a promise to provide \$300,000 for the Proposition 14 campaign. In California itself, Republicans strained every bit of financial muscle they had to defeat Tom Bradley, the first serious black candidate for governor in the state's history, a feat that they accomplished, after a subtly racist campaign, by a margin of only 50,000 votes out of 7.5 million cast. (Pettigrew and Alston 1988.) Extreme conservatives focused on defeating a handgun control initiative on the same ballot. Without a serious campaign in its behalf, the complex reapportionment proposition was lost in the cacophony of other contests. Two weeks before election day, 48% of Californians polled had not decided how they would vote on Proposition 14, and they apparently decided that, when in doubt, they would abstain or vote no.⁵⁹ After the election, but before Deukmejian took office, Democrats passed and Gov. Jerry Brown signed plans that offered additional protection to enough Republican legislators to obtain a two-thirds majority and consequent "urgency" status, thus precluding another referendum. In most cases, however, the new boundaries, drawn with the assistance of Michael Berman, were only slightly different from those that the voters had rejected in June. Republicans put up only lackadaisical resistance, Senate Minority Leader Bill Campbell remarking, "I'm sick and tired of reapportionment."⁶⁰

Other Republicans, however, persisted. When in February, 1983, national GOP operatives turned down a proposal by California state leaders that the Republican National Committee commit \$1 million to a new campaign to redraw California districts, right-wing Assemblyman Don Sebastiani, young heir to his family's wine fortune, funded an initiative initially without asking for money from the official Republican party.⁶¹ Republican campaign consultants who were angry at the Burton Plan because its safe districts robbed them of the business that might come their way if more competitive districts encouraged more active campaigns eagerly signed on with Sebastiani. (Quinn ch. 5, 99.)⁶² Phrased as a statute, rather than an amendment to the State Constitution, the initiative largely consisted of Assembly, Senate, and congressional district maps drawn at the Rose Institute by Republican political consultant Joseph Shumate. Responding to right-wing pressure, the Republican State Committee pledged \$300,000 for the Sebastiani Initiative, and Gov. Deukmejian set a special election for Dec. 13, 1983, a date whose proximity to religious holidays was a

⁵⁹Election returns, *Los Angeles Times*, Nov. 4, 1982, I-16; Richard Bergholz, "State GOP Wants Party Help for Remap Fight," *ibid.*, Feb. 2, 1983, I-3; Brazil 1982.

⁶⁰Tracy Wood, "Senate Quiets Fears, Passes Its Reapportionment Plan," *Los Angeles Times*, Dec. 24, 1982, I-3; Lowell and Craigie 1985, 249.

⁶¹Herbert A. Sample and Richard Bergholz, "Remap Referendum Called Impractical," *Los Angeles Times*, Jan. 7, 1983, I-3; Bergholz, "New GOP Strategy on Redistricting Develops," *ibid.*, Feb. 4, 1983, I-3; Bergholz, "New Effort to Overturn Reapportionment Begins," *ibid.*, Feb. 24, 1983, I-21; Bergholz, "GOP Assemblyman Announces Petition Drive to Get Redistricting Plan on Ballot," *ibid.*, 1983, I-22. For a sympathetic version of the events surrounding the initiative by Sebastiani's lawyers, see Lowell and Craigie 1985. In legal papers, they charged, astoundingly, that the legislature's plan diluted minority votes, presumably meaning that it did so more than the Sebastiani plan.

⁶²While it may be doubted that more competitive districts will improve the quality of policymaking or invigorate democratic participation, there is no question that it would increase the demand for political consultants -- a consequence not often mentioned in debates over the issue.

patent attempt to guarantee a low turnout.⁶³ Charging that it would reduce the power of minorities and women, and that the state constitutional provision mandating a reapportionment every decade should be interpreted to mean exactly one, and no more, Democrats successfully sued in the State Supreme Court to keep voters from considering the Sebastiani Initiative. As an example, the lawyers pointed out that the plan reduced the Latino population percentage in Edward Roybal's Los Angeles congressional district from 63% to 16%, and placed his home in the most Republican district in the state. It also moved a conservative Anglo area into a second Latino-majority Los Angeles congressional district, endangered at least one Los Angeles congressional seat then held by a black incumbent, removed the homes of State Senator Art Torres, Assemblyman Richard Alatorre, and Speaker Willie Brown from their current districts, packed blacks into a Bay Area congressional seat in which blacks had been able to elect their candidate of choice since 1968, and completely redrew Democratic districts throughout the state. Democrats quipped that Sebastiani has jammed so many African-Americans into one Los Angeles Assembly district that it had more blacks in it "than any district this side of Lagos, Nigeria." (Quinn 1984, ch. 5, 110.) The justices' vote went strictly along party lines.⁶⁴ The main emphasis in the opinion was on the once-a-decade provision of the State Constitution. (*Legislature v. Deukmejian*, 34 Cal. 3d 658 (1983).)

After Sebastiani's judicial rejection, Common Cause Executive Director Walter Zelman sought a compromise -- a reapportionment commission that would control the 1991 redistricting, but not continue the effort to overthrow the current lines. Adamant Republicans refused. When Sebastiani announced plans for an initiative that would write new lines into the State Constitution, thereby circumventing the State Supreme Court decision, Gov. Deukmejian muscled him aside, putting his chief political operative, Sal Russo, in charge of a campaign to establish a redistricting commission by state constitutional amendment. Instead of the balanced bipartisanship of the 1982 Common Cause/Republican Commission proposal, Deukmejian's commission, which would draw new boundaries for all state elections from 1986 on, was to be comprised of current Appeals Court justices. After the State Judicial Council objected that the task was too political for

⁶³Richard Bergholz, "GOP Weighs Effort to Redraw Voting Districts," *Los Angeles Times*, May 25, 1983, I-23; John Balzar and Douglas Shuit, "Redistricting Election Ordered," *ibid.*, July 19, 1983, I-3; Balzar, "Democrats Facing Uphill fight on Remapping Plan," *ibid.*, Aug. 19, 1983, I-1; William Schneider, "Voter Turnout Is Key To Sebastiani's Hopes," *ibid.*, Aug. 21, 1983, IV-1.

⁶⁴Sebastiani's plan, which made no effort to protect minority or female incumbents, was not helped by his right-wing radicalism -- he was the only member of the Assembly to vote against making Martin Luther King, Jr.'s birthday a state holiday -- and his penchant for insensitive comments, such his statement on the Assembly floor that he approved of female astronauts "as long as they have a one-way ticket." Keith Love, "Sebastiani Redistricting Plan a Political Time Bomb," *Los Angeles Times*, July 10, 1983, I-1; John Balzar and Douglas Shuit, "Redistricting Election Ordered," *ibid.*, July 19, 1983, I-3; Philip Hager, "Democrats Ask State Supreme Court to Stop Redistricting Vote," *ibid.*, July 20, 1983, I-3; Philip Hager, "Court to Hear Challenge to Remap Election," *ibid.*, Aug. 3, 1983, I-1; Hager, "State High Court Asked to Halt Remapping Vote," *ibid.*, Aug. 6, 1983, II-1; Douglas Shuit, "Blacks to Fight Remap Plan as 'Resegregation'," *ibid.*, Aug. 27, 1983, I-25; Philip Hager, "Remapping Issue Moves Into Court," *ibid.*, Sept. 1, 1983, I-3; Hager, "High Court Cancels Redistricting Vote," *ibid.*, Sept. 16, 1983, I-1.

sitting judges to be involved in, Deukmejian substituted retired Appeals Court justices.⁶⁵ Refusing all offers of compromise from the Democrats, Republican leaders declared that the 1981 district lines made Democratic incumbents so safe that they would target only a handful of them in 1984 (a self-fulfilling prophesy), instead spending \$4 million on qualifying and seeking to pass the initiative, which became known as Proposition 39.⁶⁶

Matching the Republicans dollar for dollar, billboard for billboard, and simplistic TV commercial for commercial, the Democrats capitalized on the weariness of the public and the media with the reapportionment issue and the widespread skepticism that partisan politics could ever be entirely removed from reapportionment.⁶⁷ Deukmejian's billboards read "Fairness, not politics," while one Democratic TV commercial featured an actor dressed like a judge raising his hand and pronouncing "In keeping with Proposition 39, I swear to protect my political party," and another ended with the slogan "Say no to the politicians."⁶⁸ More substantively, Democrats charged that 34 of the 38 current retired Appellate Court judges were white males whose average age was 73, whose current law practices might pose conflicts of interests with their reapportionment duties, and whose actions would not be accountable to the voters. The only female among the 38, former U.S. Secretary of Education Shirley Hufstедler, denounced Prop. 39 because it would "shut out of the reapportionment process such traditionally under-represented groups as women and Hispanics," and Latino activist Cesar Chavez denounced the proposal before Latino community

⁶⁵Walter A. Zelman, "Time's Up on Sacramento's Game-Playing," *Los Angeles Times*, Sept. 19, 1983, II-5; John Balzar, "Deukmejian Seeks to Form Nonpartisan Remap Panel," *ibid.*, Oct. 2, 1983, I-1; Balzar, "Sebastiani to Work for New Remap Effort," *ibid.*, Oct. 3, 1983, I-1; Balzar, "Governor's Aide Will Lead GOP Remap Effort," *ibid.*, Oct. 12, 1983, I-3; Douglas Shuit, "Deukmejian remap Plan Hits Legal Snag," *ibid.*, Nov. 10, 1983, I-3; Shuit and Balzar, "Deukmejian Sets Remap Proposal Before Judges," *ibid.*, Nov. 18, 1983, I-3; Jerry Gillam, "Remap Panel Plan Amended by Governor," *ibid.*, Dec. 2, 1983, I-3; William Endicott, "Governor Sets Redistricting Board in Motion," *ibid.*, Jan. 21, 1984, II-1; William Kahrl, "Deukmejian Comes Out Ahead -- Except in Party," *ibid.*, Nov. 14, 1984, II-5.

⁶⁶Bill Lockyer, "Let's End the War of Reapportionment With Fair Principles," *Los Angeles Times*, Oct. 5, 1983, II-7; Keith Love, "State GOP to Lower Its Sights in '84," *ibid.*, Nov. 5, 1983, I-25; Jerry Gillam, "Democrats Draw Up Remap Plan," *ibid.*, Dec. 1, 1983, I-3; Gillam and John Balzar, "Democrat Proposal for Remap Panel Advances," *ibid.*, March 8, 1984, I-3; Carl Ingram, "remap Panel Chief Clashes With Colleagues, Resigns," *ibid.*, March 9, 1984, I-3; Balzar, "GOP Remap Plan Trounced in Assembly," *ibid.*, May 2, 1984, I-3; Balzar, "Prop. 39 -- the Battle that Could Determine the Game," *ibid.*, Sept. 10, 1984, I-3; Ingram and Gillam, "Racing Industry's \$2.6 million Fights Lottery," *ibid.*, Oct. 30, 1984, I-13.

⁶⁷Editorial, "Enough is Enough," *Los Angeles Times*, Oct. 5, 1983, II-61; John Balzar, "Deukmejian, Unfazed by Prop. 39 Loss, Vows to 'Reform' State Remapping Laws," *ibid.*, Nov. 8, 1984, I-3.

⁶⁸John Balzar, "Prop. 39 -- the Battle that Could Determine the Game," *Los Angeles Times*, Sept. 10, 1984, I-3; Balzar, "Remapping Plan Causes Turmoil on Wide Front," *ibid.*, Oct. 16, 1984, I-3.

groups in Los Angeles and Orange counties.⁶⁹ Even President Reagan's landslide reelection victory could not save Prop. 39, which lost by the same 55%-45% margin that Prop. 14 had two years earlier.⁷⁰

Still, they did not stop. In February, 1985, Sebastiani proposed a two-part initiative -- first, his maps, and second, a constitutional amendment preventing the State Supreme Court from overturning them. Although Sebastiani had become "a folk hero" among conservative Republicans through his reapportionment efforts, Deukmejian and other Republican leaders shunted Sebastiani aside again, but continued *Badham v. Eu*, a legal challenge to the congressional reapportionment, in federal court.⁷¹ When a Republican attorney charged that the Burton plan was "the most egregious partisan gerrymander, not only of this decade but any other decade as well," Democratic attorneys answered that, in contrast to cases of racial gerrymandering, Republicans in California could hardly argue that they had been "shut out" of the political process, and that political parties did not deserve more protection from the courts in this regard than ethnic minorities enjoyed. A three-judge panel agreed with the Democrats in a party-line vote, and in 1989 the U.S. Supreme Court, after some apparent behind-the-scenes maneuvering, summarily affirmed the district court's dismissal of the Republicans' case. Only three Justices wished to hear the case, the first to come before them since they had ruled political gerrymandering a justiciable issue in 1986.⁷² (*Badham v. Eu*, 694 F.Supp. 664 (N.D.Cal. 1988), *aff'd mem.* 109 S.Ct. 829 (1989).)

B. DID PHIL BURTON SINGLEHANDEDLY REVERSE THE "REAGAN REVOLUTION"?

How partisan were the plans drawn in 1981, especially the "Burton Plan" for Congress? How true were Republican claims that the reapportionment cost them six or more seats in Congress and that it "preordain[ed] election results for a decade? (Quinn 1984, ch. 5, 56; Atwater 1990, 670-71.) How did the

⁶⁹John Balzar, "Prop. 39 -- the Battle that Could Determine the Game," *Los Angeles Times*, Sept. 10, 1984, I-3; Gerald F. Uelman, "Don't Plunge Judges Into Political Thicket," *ibid.*, Sept. 19, 1984, II-5; "Chavez Recruits Opposition to 4 Ballot Initiatives," *ibid.*, Oct. 6, 1984, I-30; Balzer, "Remapping Plan Causes Turmoil on Wide Front," *ibid.*, Oct. 16, 1984, I-3; editorial, "Reapportionment: No on 39," *ibid.*, Oct. 31, 1984, II-4.

⁷⁰John Balzar, "Deukmejian, Unfazed by Prop. 39 Loss, Vows to 'Reform' State Remapping Laws," *Los Angeles Times*, Nov. 8, 1984, I-3.

⁷¹John Balzar, "Sebastiani Revives Reapportionment," *Los Angeles Times*, Feb. 13, 1985, I-3; Philip Hager, "GOP Presses Challenge to '82 California Remapping," *ibid.*, Dec. 4, 1986, I-3.

⁷²Philip Hager, "Judges Question GOP's Bid to Dump California Remap Plan," *Los Angeles Times*, Dec. 6, 1986, II-1; Philip Hager, "Court Upholds Democrats' '82 State Reapportionment," *ibid.*, April 23, 1988, I-1; David G. Savage, "Court Rejects GOP Bid to Overturn District Lines," *ibid.*, Oct. 4, 1988, I-3; Savage, "High Court Revives Political Remapping Case," *ibid.*, Nov. 15, 1988, I-3; Savage, "Justices Deny GOP Appeal of California Redistricting," *ibid.*, Jan. 18, 1989, I-1.

habits and identifications of the voters change over the 1980s, and what implications did these changes have for the redistricting of the 1990s? How did minorities fare under the Democratic plans? Were sporadic Republican charges that Democrats split minority communities in order to insure the election of Anglo Democrats true?

The *Congressional Quarterly* retabulations imply that the Burton/Berman lines adopted in 1982 helped the Democrats somewhat in years in which voting trends were generally favorable to the party, but might have hurt them slightly in "bad years."⁷³ Democrats won the most congressional seats that they had ever won in the state, 29 of 43 or 67.4%, in 1976. If the 1976 congressional votes are tabulated in the 1982 lines, the Democrats would have won 31 of 45, or 68.9%. In 1978, Democrats actually won 26 of 43 or 60.5%; the aggregated totals under the Burton plan would have been 26 of 45 or 57.8%. In the 1980 election, which Republicans touted throughout the decade as the proper election to use to determine the effect of the "Burton gerrymander,"⁷⁴ Democrats won 22 of 43 seats, or 51.2%, but if the Burton plan had been in effect, they would have carried only 21 of 45, or 46.7%.

Trends depicted in Figures 1 and 2 above also lend little support to the Republicans' charges. Although the Democratic advantage in voter registration dropped for a decade from its high point in 1976, it roughly flattened out after that, and the decline was offset by an apparent increase in party loyalty by those who did register as Democrats and a decrease among Republicans. As Senate Majority Leader David Roberti remarked at the time, "what is happening is that very, very conservative Democrats are now registering Republican. They are registering the way they vote."⁷⁵ In hypothetical congressional and Assembly districts in which 55% of the total registrants were Democrats and either 38% or 40% were Republicans, 1980 marked the low point for the Democrats. Democrats could expect to have carried a "55/40" congressional district by 15% in 1974, to have lost it by 27% in 1980, but to have won it by a 15% margin in 1990. In the Assembly, the figures are less dramatic, but there was still an estimated 15% swing over the period. The wide variation in such numbers suggests that redistricting did not produce a static political system, as the bare statistics on the number of seats switching from one party to another might seem to imply, and that it was unrealistic for Republicans to expect to do as well the rest of the decade, particularly in congressional races, as they did in the extraordinary year of 1980.⁷⁶

Table 4 applies the behavioral patterns of the 1982 and 1984 elections to the registration patterns and

⁷³Curiously, the *CQ* data do not appear to have been mentioned during the public debate in California over the "Burton Plan." It has been employed as an index of the intent of the redistricters by Born 1985.

⁷⁴Computed from data in: *Congressional Quarterly* 1983, 33-85. Curiously, the anonymous author of the narrative section on California redistricting in the same volume (p. 29) does not appear to have bothered to make these calculations.

⁷⁵Jerry Gillam and Douglas Shuit, "GOP Faces Hard Road in Senate Campaign," *Los Angeles Times*, Nov. 14, 1985, I-3.

⁷⁶Daniel M. Weintraub and Jerry Gillam, "Remap Process No Longer a Narrow Political Concern," *Los Angeles Times*, March 11, 1990, A1.

boundary lines of 1980, and vice versa. It parallels Table 3 and was estimated in the same manner. If the ordinary least-squares regression relationships between voting and registration in congressional districts had been those of 1982, but the Democratic and Republican registration percentages been the same as the 1980 boundaries, Democrats would have won 27 of 43 seats (62.2%), instead of the 22 of 43 (51.1%) that they actually won in 1980. This suggests that the 1980 party balance in congressional seats is a very misleading baseline with which to compare the results under the Burton plan. In the Assembly, the comparable figures are 49 and 47. The trends in 1982, a year of Republican recession, were simply more favorable to the Democrats than those of 1980, a year of Democratic inflation.

To estimate the effect of changing boundaries, one should read down the columns of Table 4 and similar tables, thus keeping the behavior constant, but varying the boundaries. In a bad Democratic year such as 1980, the 1982 Burton boundaries seem to have gained the Democrats at most three seats,⁷⁷ while those of 1984⁷⁸ actually lost them 2.2% of the seats (22 of 45 in 1984 vs. 22 of 43 in 1980). The pattern is very similar in the Assembly. In 1982, the boundaries seem to have made little difference in the outcomes, as Democrats are predicted to have won a half of a percentage point more seats under the Masters' Plan than under Burton, and one more Assembly seat. In 1984, when President Reagan's coattails disappeared, the Democrats might well have won an additional congressional seat and as many as ten Assembly seats if they had still been operating under the Masters' Plan. These results suggest that Burton and Berman were quite risk averse, padding the margins of incumbents, instead of gambling that a series of close districts might fall their party's way. While such a strategy reduces turnover, it does not maximize partisan gains. By this measure, the Burton partisan gerrymander was largely a fiction.

⁷⁷26 of 45 is 57.8%. Applying this percentage to the 43 districts the State had in the 1970s gives 24.8 seats, or 25 rounded off. Democrats actually won 22 of 43 in 1980, and 25-22=3.

⁷⁸1984 was actually a good year for Democrats below the Presidential level in California, as Republicans targeted only two marginal Democratic congressmen in 1984, both parties concentrated on Proposition 39, and every political observer knew very early that turnout in the presidential contest between Walter Mondale and Ronald Reagan would make little difference in Reagan Country. Therefore, neither party's vote for Congress or the Assembly was very high, and there were few close contests, especially for Congress.

Table 4:
What If Voters Had Behaved as in 1982 and 1984,
But In The 1980 Districts, and Vice Versa?

Boundaries in Effect	Behavioral Pattern		
	1980	1982	1984
Panel A: Congress			
1980	22	27	28
1982	26	28	--
1984	22	--	27
Panel B: Assembly			
1980	47	49	57
1982	50	48	--
1984	41	--	47

Entries are numbers of seats won or estimated to be won by Democrats

A final way to gauge the difference between the Burton Plan and the 1970s Masters' Plan is to subtract the Republican from the Democratic registration in each district in 1980 and again in 1982, order each series (separately) from the most Republican to the most Democratic district, and graph one plan against another. Figure 3 compares registration figures from the last year of the Masters' Plan, 1980, against those of the first Burton Plan as it stood at the time of the 1982 election. Figure 4 compares 1980 with the amended Burton Plan, using November, 1984 statistics.

Figure 3 shows that while Burton packed somewhat larger percentages of Republicans into safely Republican districts, McKaskle had packed more Democrats into overwhelmingly Democratic districts. Figure 4 demonstrates that the revised congressional plan, which enough Republican members of Congress and the legislature preferred to allow it to pass easily, created even safer Republican districts. In the range of competitive districts, however, the more detailed inset graphs above Figures 3 and 4 make clear how little the registration patterns of the three plans differed. Democrats won only two congressional districts in 1982 in which they enjoyed a registration margin over the Republicans of less than 20%. In the roughly competitive terrain of 10% to 30% Democratic registration margins, there was little to distinguish the court-ordered plan

of the 1970s from the "partisan gerrymander" of the 1980s. The Burton Plan created slightly more districts with about a 20% Democratic registration margin, while McKaskle's plan, by 1980, had more at approximately the 15% level. Shifts in the party balance over the decade, the influence of economic events or scandals, or the presence of especially attractive or unattractive candidates could easily outweigh such tiny registration differences. Analogous graphs for the Assembly, not presented here, yield similar conclusions.

(Figures 3 and 4 about here)

In a 1991 press conference on redistricting, Speaker Willie Brown asserted that Republicans failed to capture control of the Assembly during the 1980s not because of partisan gerrymandering, but "because they have fielded inferior candidates and run poor campaigns."⁷⁹ Before he died in 1983, Congressman Phil Burton described his strategy in redistricting: "The most important thing you do, before anything else, is you get yourself in a position (to) draw the lines for (your own) district. Then, you draw them for all your friends before you draw anyone else's."⁸⁰ These two statements illuminate the preceding statistical comparisons of the plans of the 1970s and 80s. By concentrating their money and energy on repealing the Democrats' boundary lines, Republicans may not only have failed to target their funds wisely. They may also have created such low expectations of victory as to discourage better potential candidates from running and potential supporters from contributing time and funds to them. Railing against reapportionment, in other words, may have been self-defeating for the GOP. Burton's typically crusty boast reflects widely known facts: He buttressed the congressional district of his brother John Burton (who, however, declined to run for reelection in 1982), collapsed that of his bitter opponent Congressman John Rousselot, and drew three districts for Howard Berman and his allies and two more designed to elect Latinos. After accomplishing this -- all six of these Democratic districts had at least a 27% registration advantage in 1982 -- even Phil Burton and Michael Berman could not do much more than protect enough incumbents to get a plan through the legislature. Although it was in their interest to claim as much credit as they could, they simply did not have extra Democratic voters left over to change the face of California politics for a decade.⁸¹

⁷⁹Daniel M. Weintraub, "Incumbents Come First in Redistricting, Speaker Says," *Los Angeles Times*, Aug. 30, 1991, A3.

⁸⁰Quoted in Baker 1989, 13.

⁸¹For a similar general conclusion about reapportionment in the 1970s and 80s throughout the country, see Niemi and Jackman 1991, 199.

IV. THE 1990S: BACK INTO THE JUDICIAL THICKET

A. "THE MAXIMUM NUMBER OF REPUBLICAN SEATS"

Less than a year after losing their judicial challenge to the California reapportionment of the 1980s, Republicans began their campaign to control the redistricting of 1991. In fact, they might be said to have begun it in 1986, when they fervently supported a campaign to replace the Democratic majority on the State Supreme Court with a Republican one. Republicans, *Los Angeles Times* reporter John Balzar noted, "lead the opposition to the chief justice," Rose Bird, charging that she "has sided with Democrats, or at least liberals, on some key cases over the years -- in particular, protecting a Democrat-drawn reapportionment plan for the Legislature and Congress from a GOP initiative challenge, a ruling that partisans on both sides take personally to this day." According to Bird's defenders, the opposition's \$9 million campaign against her, led by Republican Gov. George Deukmejian, amounted to "the sleaze parade of 1986, . . . an unheard-of intrusion by the executive branch into the . . . independence of the judiciary."⁸² After spearheading the defeat of the state's first female Chief Justice, its first Latino liberal Associate Justice, and another liberal Anglo, Deukmejian appointed his former law partner Malcolm Lucas, like him an Anglo male conservative, as Chief Justice.

Reapportionment was the Republican National Committee's "No. 1 national goal" in the 1990 election cycle, according to National Chairman Lee Atwater, and "the governorship of California has more than any other single thing to do with the national reapportionment than anything I can think of." Closer to home, Assembly Minority Leader Bill Jones asserted that "Reapportionment is the whole ballgame. . . . The political landscape in California will be shaped in no small part by that for the next 10 to 20 years."⁸³ Coupled with the push to elect nationally ambitious Pete Wilson governor, Republicans sponsored two initiatives on the subject for the June, 1990 ballot. Written by "top Republican activists," proposition 118 aimed at forcing a bipartisan plan by requiring that it be passed by two-thirds of both houses of the legislature, signed by the governor, and ratified by the voters. If the legislature did not act by July 15 in the year after the census, the State Supreme Court (by 1990, safely Republican) would take over. A competing proposition, backed by other Republicans, would take effect if it got a larger majority than Proposition 118 did. Proposition 119 proposed to establish a judge-appointed commission of five Democrats, five Republicans, and two

⁸²John Balzar, "GOP Relishes, and Democrats Fear, Impact of Bird Campaign," *Los Angeles Times*, Feb. 10, 1986, I-3; untitled story, *ibid.*, April 18, 1986, I-2; Frank Clifford, "Supreme Court: An Ominous Question," *ibid.*, I-1. The leading ostensible issue in the campaign against Bird and the other Democrats on the court was the death penalty. In the nine years since the Republicans took over the court, the State has executed two persons.

⁸³Robert Shogan, "'90 California Governor Race Seen as Key to Redistricting," *Los Angeles Times*, Oct. 26, 1989, A3; Daniel M. Weintraub, "Lawmakers' Fall Session Is Sure to Be Divisive," *ibid.*, Aug. 18, 1991, A3.

independents, chosen with concern for racial, ethnic, gender, and geographic diversity, to consider plans submitted to it by interested groups.

Although both propositions established guidelines about following geographic and city-county boundaries and requiring "competitive" districts, neither mentioned protection of ethnic voters, leaving the propositions open to charges by Democrats that "both measures are designed to aid Republicans by concentrating ethnic minorities into a few districts," and that by scrambling current boundaries, they would "unseat minority and women legislators, who only recently have begun to make gains after decades of being shut out of office." Others claimed that it would decrease congressional support for the environment, since it would reduce the number of Northern California members whose districts touched the coast, where voters of both parties tended to be more environmentalist. Common Cause, the National Organization for Women, the Sierra Club, the League of Conservation Voters, and the Mexican-American Legal Defense and Education Fund (MALDEF) opposed both propositions, while major corporations such as Chevron, Hewlett Packard, and TransAmerica Insurance Company supplemented the Republican National Committee's \$675,000 contribution in favor of them. With Democratic candidates pooling funds to oppose the measures and organized labor and other Democratically-oriented interest groups joining them, the grand total of spending in the campaigns for and against the initiatives topped \$6 million.⁸⁴

Once again, the Democrats surprisingly turned back redistricting initiatives. In early May of 1990, fewer than one in four voters felt they knew enough to express opinions on Propositions 118 and 119, but when read descriptions of them, solid pluralities backed both. Yet a month later, after another skillful TV and direct mail campaign directed for the Democrats by Michael Berman, the electors vetoed both propositions by 2-1 margins, nearly half of self-identified Republicans joining 80% of the Democrats in defeating them.⁸⁵ November, however, brought more cheerful news for the GOP, as voters not only moved U.S. Senator Pete Wilson into the Governor's Mansion, but also limited members of the Assembly to three two-year terms and Senators to two four-year terms and sliced legislative staffs by a third. Using Wilson's veto power, Republicans would be able to block any reapportionment that they did not like, and even if they did not get just the districts they desired, they would at least be able to retire experienced Democrats, especially their

⁸⁴Daniel M. Weintraub and Jerry Gillam, "Remap Process No Longer a Narrow Political Concern," *Los Angeles Times*, March 11, 1990, A1; Joe Scott, "Old Allies Go to War Over Remap," *ibid.*, April 1, 1990, M5; Weintraub, "Common Cause Opposes Plan for Redistricting Commission," *ibid.*, May 2, 1990, A3; Weintraub, "Brown Calls Redistricting Propositions GOP 'Fraud,'" *ibid.*, May 9, 1990, A3; Weintraub, "Fraud Charges Traded on Redistricting Propositions," *ibid.*, May 17, 1990, A3; Weintraub, "Voters Could Radically Alter Redistricting," *ibid.*, May 27, 1990, A3; Weintraub, "Redistricting Measures Costliest on the Ballot," *ibid.*, June 2, 1990, A29.

⁸⁵George Skelton, "Feinstein Widens Support, Increases Lead," *Los Angeles Times*, May 6, 1990, A1; Daniel Weintraub, "Voters Could Radically Alter Redistricting," *ibid.*, May 27, 1990, A3; Daniel Hays Lowenstein, "The Message That Voters Sent in Rejecting Propositions 118 and 119," *ibid.*, June 17, 1990, M5.

nemesis Speaker Willie Brown, later in the decade.⁸⁶ And according to the Democrats' national reapportionment leader, Congressman Vic Fazio of Sacramento, some Republicans hoped to wield enough power in reapportionment to reduce the Democratic congressional delegation from 26 of 45 in 1990 to 20 of 52 in 1992.⁸⁷

The Democratic strategy on reapportionment in 1991 was simple: conciliate minority groups and make a deal with either conservative or moderate Republicans. Thus, they made Peter Chacon, a San Diego Latino, chairman of the Assembly Elections and Reapportionment Committee, named Sen. Art Torres to the Senate Elections and Reapportionment Committee, appointed Latinos as counsels to each committee, and instructed redistricting technicians to group together nearby areas of ethnic minority concentration. When MALDEF had trouble with the technical details of some of its plans, Democrats offered assistance without distorting MALDEF's intentions. The Democrats' preferred sets of plans (referred to as "Plan A" for each house) were primarily negotiating documents, Democratic daydreams floated in order to be bargained away or pressed in court, should the negotiations with the Republicans deadlock. To conservative Republicans, the Democrats offered a set of plans, termed "Plan B," that concentrated Republican seats in areas thought to be strongly anti-abortion and anti-gun control, and they managed to obtain the endorsement of Georgia Congressman Newt Gingrich for the congressional version of this scheme. Another set of plans, designated "Plan C," created seats in areas where Republicans were considered more likely to be pro-choice and pro-environment, which was believed to be attractive to the supposedly "moderate" Pete Wilson. The three plans constituted a public announcement that the Democrats were willing to bargain with anyone.⁸⁸

Gov. Wilson's strategy was even simpler: Refuse to negotiate or to let any other Republican seriously negotiate with the Democratic majorities in the Assembly, Senate, or Congress, appoint a "commission" without consulting any Democratic or minority group leader, veto all legislative plans, turn the issue over to the State Supreme Court -- which Wilson aides privately referred to during this period as "Pete's law firm" -- and suggest that the court's special masters use the Commission's proposal as a starting point.⁸⁹ From time to time, the Governor and other Republicans, as well as the Democratic leaders, issued various "good government" statements, such as that Wilson wanted "an honest reapportionment, one that favors people over

⁸⁶Republican Assembly candidates often seemed to run against Brown as much as against their actual opponents, and their pamphlets sometimes featured photos of Brown and made transparent appeals to racial bigotry in their references to him. Dan Morain, "Speaker's Rearranging of Assembly Is Lesson in Power," *Los Angeles Times*, Jan. 1, 1993, A25.

⁸⁷William J. Eaton, "Fazio Sees Battle Over 100 New House Seats in Remap," *Los Angeles Times*, Nov. 9, 1990, A4.

⁸⁸Daniel M. Weintraub, "Remap Plans Would Add 4 House Seats in Southland," *Los Angeles Times*, Sept. 12, 1991, A1; Weintraub and Mark Gladstone, "Lawmakers Miss Deadline for Redrawing Districts," *ibid.*, Sept. 14, 1991, A22; Gladstone, "Redistricting Expertise Brings Berman Back to Sacramento," *ibid.*, B1; Weintraub, "Bipartisan Redistricting Deal Taking Shape," *ibid.*, Sept. 15, 1991, A3; Weintraub, "Wilson Demands Remap Changes That Favor GOP," *ibid.*, Sept. 19, 1991, A3; Weintraub, "Democrats Pass Redistricting Plans," *ibid.*, Sept. 20, 1991, A3.

⁸⁹Wilson spent approximately \$1.5 million of his campaign funds on Republican efforts during the 1991 redistricting. Daniel M. Weintraub, "Brown Leads Campaign Race for Cash," *Los Angeles Times*, Feb. 1, 1994, C1.

politicians," and from time to time, Republicans murmured nice things about ethnic minorities. "We think we have a lot in common with some of those minority groups," the Governor's aide Marty Wilson declared awkwardly. But when they came to define "fair" districts, Republican leaders acknowledged that they were fundamentally interested in partisan advantage. A "fair district," Assembly Minority Leader Bill Jones announced, was one in which Republican registration was at least 38% and which George Bush had carried in 1988. "Our position," said Congressman John Doolittle, the spokesman for California's Republican delegation in reapportionment matters in 1991, "has always been to push for the maximum number of Republican seats."⁹⁰

At first, some blacks and Latinos thought that Republicans might deal with them. Black Republican Steve Hamilton, vice chair of the nationalist Congress of Racial Equality, charged that "The current districts take advantage of blacks. You're nothing more than a pawn." Not only was his charge patently false,⁹¹ but his solution, to pack more blacks into districts that already elected black representatives, thereby reducing black influence in surrounding districts and overall, aimed more at assisting Anglo Republicans than the people he claimed to speak for. Bay Area Republicans circulated maps that lumped all minorities together and shifted lines allegedly to create several minority influence districts and assuredly to increase the number of districts potentially winnable by the GOP. Seeking to avoid being captured by either side, MALDEF, the Asian Pacific Legal Center, and California Rural Legal Assistance worked independently of either party, proposing partial plans for minority areas that did not take into account the spillover effects on predominantly Anglo districts -- demonstrating a naivete that Democratic politicians of all ethnic groups decried and Republicans applauded. Pointing out that without Democratic control of the legislature, African-American and Latino officials would lose powerful committee chairs and control of committee majorities, Speaker Willie Brown argued that MALDEF's plan "would be worse for minorities" in the long run than Democratically-produced proposals for the Assembly.⁹² In the end, all the maneuvering was irrelevant, because Gov. Wilson refused to

⁹⁰Richard C. Paddock, "Big Population Gains Will drive State Redistricting," *Los Angeles Times*, March 25, 1991, A1; Daniel M. Weintraub and Alan C. Miller, "Governor Stops Plan to Negotiate Remap Deal," *ibid.*, May 23, 1991, A3; Weintraub, "Wilson Outlines redistricting Strategy," *ibid.*, July 19, 1991, A3; Jerry Gillam, "Wilson Picks Redistricting Panel," *ibid.*, July 27, 1991, A21; Sherry Bebitch Jeffe, "This Year's Reapportionment Script is Still Full of Question Marks," *ibid.*, Aug. 18, 1991, M6; Weintraub, "Wilson Asks Court Takeover of Redistricting," *ibid.*, Sept. 7, 1991, A1; Weintraub and Mark Gladstone, "Lawmakers Miss Deadline for Redrawing Districts," *ibid.*, Sept. 14, 1991, A22; Weintraub, "Bipartisan Redistricting Deal Taking Shape," *ibid.*, Sept. 15, 1991, A3; Weintraub and Carl Ingram, "Chance Fading for bipartisan Deal on Reapportionment," *ibid.*, Sept. 17, 1991, A3; Sherry Bebitch Jeffe, "Wilson Under Fire," *ibid.*, Sept. 22, 1991, M1; Weintraub, "Remap Bills Are Vetoed by Wilson," *ibid.*, sept. 24, 1991, A1; Philip Hager and Weintraub, "Redistricting Task Goes to State Justices," *ibid.*, Sept. 26, 1991, A3.

⁹¹The proportion of African-Americans in the Assembly, Senate, and Congress from the state, 7.9%, was slightly higher than their proportion in the general population, 7.4%.

⁹²Daniel M. Weintraub, "Minorities Get GOP Support in Remap Battle," *Los Angeles Times*, Aug. 26, 1991, A3; Irene Chang, "Asians, Latinos Join in Proposal for Remapping," *ibid.* Aug. 31, 1991, B2; Bill Boyarsky, "New Agenda for Asians and Latinos," *ibid.*, Sept. 4, 1991, B2; Weintraub, "Proposed Senate Districts Protect Most Incumbents," *ibid.*, Sept. 5, 1991, A3; Weintraub, "Latinos Offer Own Plan for Redistricting," *ibid.*, Sept. 6, 1991, A3; Weintraub and Carl Ingram, "Chance

negotiate with anyone and even used White House pressure to shepherd any straying Republicans back into the compliant fold.⁹³

A month and a half before the legislature's scheduled adjournment, Wilson appointed an ethnically, sexually, and nominally politically balanced six-person reapportionment panel: two retired Republican judges, one of whom was Asian-American; a female black Republican expert on Russian politics who had served on the staff of the National Security Council under President Bush; and three Democrats, including one Latino, ranging in age from 70 to 83.⁹⁴ None of them appears to have held elective office or had any previous experience in reapportionment. No doubt their races, genders, and political affiliations were sufficient qualification, since they scotched predictable charges of partisanship and insensitivity to minority group and female concerns.⁹⁵ Their two chief consultants were Prof. Gordon Baker, the junior member of the 1973 McKaskle-Baker team and a political scientist at the University of California at Santa Barbara whose standards for redistricting in a 1989 article ignored the effect on minority ethnic groups, and Prof. Richard Morrill, a Geographer at the University of Washington, who had drawn plans for the Rose Institute in 1981.⁹⁶ Unfortunately for Wilson's strategy, his Commission took much longer to draw districts than expected, robbing him of a debating point against the Legislature.⁹⁷ When the Commission's plans were revealed, moreover, they decimated districts then represented by members of minority groups, reducing the number of congressional seats winnable by blacks in Los Angeles from three to one and the number of probable Latino seats in all three bodies from 10 to 5. In the Assembly, the professors had overconcentrated blacks in one Los Angeles Assembly district and set up a probable confrontation between African-Americans and Latinos in another. As a consequence, the Governor had to bring in his redistricting consultant, Joe Shumate, the author of the 1983 Sebastiani Plan, to fix up the minority districts to fight an almost certain Voting Rights Act challenge.⁹⁸ (See Table 5, below, for further details.) No further demonstration of the effect of

Fading for Bipartisan Deal on Reapportionment," *ibid.*, Sept. 17, 1991, A3.

⁹³Daniel N. Weintraub, "Bipartisan Redistricting Deal Taking Shape," *Los Angeles Times*, Sept. 15, 1991, A3.

⁹⁴Jerry Gillam, "Wilson Picks Redistricting Panel," *Los Angeles Times*, July 27, 1991, A21.

⁹⁵Daniel M. Weintraub, "Wilson Outlines Redistricting Strategy," *Los Angeles Times*, July 19, 1991, A3.

⁹⁶Baker 1989. On Morrill's 1981 plan, see Cain 1984, 13-14.

⁹⁷Daniel M. Weintraub, "Wilson Asks Court Takeover of Redistricting," *Los Angeles Times*, Sept. 7, 1991, A1.

⁹⁸Daniel M. Weintraub, "Wilson Panel Remap Plan Would Help Republicans," *Los Angeles Times*, Oct. 12, 1991, A31. Under the Governor's Commission's plan, the black population percentages in the three most heavily African-American congressional districts in Los Angeles County were 57.3, 20.7, and 14.7. One district was heavily packed, and black incumbents would have lost one and probably two of the three seats. By contrast, the Democrats' plans spread the black population around in the three seats, making their percentages 40.5, 38.3, and 30.1 and keeping the boundaries relatively stable, and the final Masters' Plan set the same percentages at 40.3, 42.7, and 33.6. Under each of these plans, given contemporary voting patterns in the area, black incumbents would quite probably retain their seats.

"balanced" commissions or "nonpartisan" consultants on minority representation is necessary.

Stymied by Wilson, Democrats in mid-September mechanically passed three plans for each legislative body, perhaps hoping that Wilson would finally choose one, but more probably out of frustration. "I'm at the breaking point," said Speaker Brown, the veteran of more drawn-out legislative struggles than any other legislative leader in the state's history. "I do better letting the courts rip me off. . . . Not from Day 1 did I believe that the governor and [Assembly Republican leader Bill] Jones wanted to do anything except have me deliver the Democratic Party to them. I, of course, was not going to do that."⁹⁹ Immediately vetoing all three, Wilson turned over the task to the State Supreme Court, which appointed as Special Masters three retired Anglo¹⁰⁰ judges, two Republicans and one nominal Democrat, all of whom had been appointed to the bench by Republican governors. The Masters, in turn, relied chiefly on University of San Francisco law professor Paul McKaskle, who had drawn the 1973 court-sponsored plans.¹⁰¹

Speaking as though electoral boundaries had nothing to do with electing people, the Special Masters claimed to have acted utterly apolitically. "We had no agenda, no political purpose, and we did not consider any political consequences," announced George A. Brown, a Reagan appointee to the bench from the conservative Central Valley county of Kern.¹⁰² Nonetheless, the immediate reaction to the plans from *Los Angeles Times* pundit Sherry Bebitch Jeffe was that it portended "a Democratic disaster of major proportions: their majority in the Assembly is at risk; their margin in the state Senate is likely to decline, and their

In the Assembly, the black population percentages in the relevant districts in Los Angeles under the Commission plan were 53.9, 40, 32, 25.5, and 21; under the Democratic plans, they were 38.6, 35.8, 33.8, 29, and 24.8. While the Latino population percentages were generally high in all of these districts, Democrats made sure they were always substantially below the black percentages, avoiding inter-ethnic confrontations. By contrast, the Commission's 21% black district was 75.1% Latino in population and 26.2% Latino in registration.

⁹⁹Daniel M. Weintraub, "Democrats Pass Redistricting Plans," *Los Angeles Times*, Sept. 20, 1991, A3 (first part of quotation); Weintraub and Carl Ingram, "Chance Fading for Bipartisan Deal on Reapportionment," *ibid.*, Sept. 17, 1991, A3 (quotation after elision).

¹⁰⁰One judge, Rafael Galceran, had a Spanish surname, though he was born in Jackson, Mississippi in 1921 (Livermore 1985/86, 295) and was completely unknown to the Latino legal community in Los Angeles county, where he lived, in 1991. "When I testified before the Masters," said MALDEF reapportionment leader Arturo Vargas (personal communication, Aug. 2, 1995), "all I remember is looking up at three old white men."

¹⁰¹Daniel M. Weintraub, "Remap Bills Are Vetoed by Wilson," *Los Angeles Times*, Sept. 24, 1991, A1; Philip Hager and Weintraub, "Redistricting Task Goes to State Justices," *ibid.*, Sept. 26, 1991, A3; Hager, "Wilson Asks Federal Court to Stay Out of Redistricting Fight," *ibid.*, Oct. 9, 1991, A3; Hager, "How Panel Redrew the Political Map," *ibid.*, Dec. 8, 1992, A3.

¹⁰²Philip Hager, "How Panel Redrew the Political Map," *Los Angeles Times*, Dec. 8, 1992, A3. Intentionally or unintentionally, the State Supreme Court distorted what had transpired when they claimed that "the parties and amici curiae uniformly confirmed at oral argument that the process employed by the Masters was entirely free of political bias or intent." *Wilson v. Eu*, 1 Cal.4th 707, 719 (1992). In fact, what the Democratic attorneys said in oral argument was that they were not prepared to make an affirmative case that the plan had a partisan intent -- a "Scotch verdict," rather than a "not guilty" verdict, and they argued strenuously that the plan had a pro-Republican effect or bias.

lop-sided domination of the state's congressional delegation is at an end." Rose Institute Republican Alan Heslop declared that Pete Wilson and Willie Brown "rolled the dice. It seems to me the governor won and won pretty big. Willie Brown lost and may have lost in a decisive fashion and a rather permanent fashion." Republican leaders in Sacramento were said to be "overjoyed," predicting that Republicans would win majorities in the Assembly and congressional delegations and 19 of the 40 seats in the Senate, while Assembly Democrat Steve Peace denounced the Masters' plan as a "partisan gerrymander of gigantic proportions," and an unidentified associate of the Berman-Waxman group asserted that "It looks like a partisan Republican plan drawn by a partisan Republican court." The seats of Democratic reapportionment leaders seemed especially targeted: Congressman Vic Fazio's Sacramento-area district was extensively reshaped and made much more conservative, while the Berman-Waxman allies' West Los Angeles seats in Congress were reduced from four to two, and the residences of three of their Assembly allies were placed in the same district.¹⁰³

Minority reaction to the Masters' Plan was unfavorable, if less harsh. One much more secure black Assembly district could have been drawn in Los Angeles county, and African-American Congressman Julian Dixon's seat gained affluent Jewish Democrats and lost Anglo Republicans, setting up a potential intraparty, interethnic battle in case the popular Dixon retired.¹⁰⁴ The rapidly-growing Latino population gained another congressional seat in Los Angeles in this and every other proposed plan, but the Masters' configuration substituted Anglo for black and Latino Democrats in the adjoining Latino seat held by Edward Roybal since 1962. Only the unwillingness of the Berman-Waxman alliance to back a non-Latino candidate kept the seat in Latino hands when Roybal retired in 1992. In Los Angeles county, MALDEF's proposed plan created six Assembly and three State Senate districts in which Latinos comprised at least 40% of the estimated registered voters. Comparable numbers in the Masters' Plan were four and two.¹⁰⁵

McKaskle also believed that legally he had more responsibility to adhere to the vague state judicially-created criteria of compactness and minimizing the crossing of political boundaries than he did to join centers of minority population -- unless they could obviously control the politics of a district. And while in considering "majority-minority" or "control" districts, the Masters did consider the ethnicity of the other people in the districts, they claimed not to have considered the political composition of the others in "influence districts" -- that is, those in which minorities could not by themselves elect a candidate of choice, but where they could strongly affect the choice of the district. (*Wilson v. Eu*, 1 Cal. 4th 707, 714-15, 722,

¹⁰³Jeffe, "Why Republicans May Rue Their Heartfelt Support for Term Limits," *Los Angeles Times*, Dec. 8, 1991, M6; Daniel M. Weintraub, "Wilson Got His Wish in Remap Plan," *ibid.*, Dec. 5, 1991, A3; Weintraub, "Remap Could Bring Major Gains for GOP," *ibid.*, Dec. 4, 1991, A1; Bill Stall and Alan C. Miller, "Plan Would Carve Up Democratic Stronghold," *ibid.*, Dec. 4, 1991, A25.

¹⁰⁴When two long-time Anglo Democratic incumbents were thrown into the same district, Carson City Councilwoman Juanita M. McDonald, an African-American, won a startling upset victory in the primary and faced no Republican opposition in the general election.

¹⁰⁵Daniel M. Weintraub, "Latino Group Seeks to Alter Remap Plans," *Los Angeles Times*, Dec. 17, 1991, A3.

751-53, 767-69, 775-78, 790-91 (1992).)

Yet to blind oneself to partisanship (if that is what the Masters really did) is to endanger minority positions and restrict minority influence. As the Dixon and Roybal examples above spotlight, to control an overwhelmingly Democratic district, minorities need to compose a larger proportion of the population than in a district with a somewhat larger proportion of Republicans, because the crucial contest in the Democratic district will be the primary. Moreover, to place African-Americans or Democratic Latinos in a district that Republicans can easily carry will deprive the minorities of nearly all influence over the winning officeholder. Their votes will be almost entirely wasted.¹⁰⁶ Even before mainstream California Republicans embraced the anti-immigrant Proposition 187 in 1994 and the effort to end affirmative action for underrepresented minorities in 1995-96, members of the party had based campaigns on the immigrant "invasion" from the south, circulated scurrilous anti-Latino doggerel in the legislature, and run anti-welfare TV ads that featured black and brown "welfare mothers."¹⁰⁷ Since all such ethnically divisive efforts help to insure that African-Americans and Latinos will remain loyal Democrats, partisan and minority group concerns will necessarily continue to overlap in redistricting.

Table 5 summarizes the ethnic percentages in each of the 45 congressional districts in the Burton-Berman reapportionment (as of 1990), and in the 52 districts in the 1991 Masters' Plan and the seven alternative plans. Except for the egregious design of the Governor's Commission, which clearly overconcentrated the black population and the Latino registration, the contrast between the plans lies more in districts in which minorities could influence the result than in those which they could effectively dominate by their numbers. Pro-Democratic plans (1990, A, B, C, and MALDEF) concentrated minorities, while pro-Republican plans (the Masters' plan, the Commission's, Shumate, and Jones) scattered them. Thus, the favorite plans of the Democrats, A and C, created two more districts than any of the Republican plans in which the black population made up 10% or more, and Plan A drew two or three more districts in which the Latino registration was above 20% than any of the Republican plans did.

¹⁰⁶Examples are the heavily black and brown Los Angeles county community of Pomona, tacked onto the predominantly Republican Orange county 41st Congressional District, and rural, 65% Latino Imperial county, tacked onto the heavily Republican San Diego suburbs in the 52nd Congressional District. The victorious Republicans in these two districts averaged 97 (where 100 is the most conservative) on the *Congressional Quarterly* "conservative coalition" index in 1993 and 1994. The average score for Latino members of Congress from Southern California in the same years was 26.

¹⁰⁷"Bill (Tax Reduction) Hoge for Assembly." "Invasion: U.S.A." (pamphlet, 1992, in author's possession); English Language Political Action Committee, "Protect English: Vote Against Feinstein For U.S. Senator November 3, 1992," (pamphlet, 1992, in author's possession); Eric Bailey and Dan Morain, "Anti-Immigration Bills Flood Legislature," *Los Angeles Times*, May 3, 1993, A3; Morain and Mark Gladstone, "Racist Verse Stirs Up Anger in Assembly," *ibid.*, May 19, 1993, A3; Gladstone, "Assemblyman Takes Heat for Anti-Immigrant Poem," *ibid.*, May 20, 1993, A3. TV ads for Gov. Wilson's proposal to cut Aid to Families with Dependent Children by 25% spotlighted minorities. The November, 1992 ballot proposition was rejected by the voters of the state. In the summer of 1993, Gov. Wilson sought to raise his 15% approval rating by calling for the repeal of the citizenship section of the 14th Amendment, and he rode his endorsement of Prop. 187 to reelection and the launching of his 1996 presidential bid.

Table 5:
Ethnic Percentages for 1990 & 1991 Congressional Plans

Decile	Proposed Plans								
	1990 Plan	Masters	A	B	C	Gov. Com	Shumate	Jones	MALDEF
Panel A: Black Population									
0-9.9	29	43	41	43	41	43	44		42
10-19.9	11	5	7	5	7	5	4		6
20-29.9	1	0	0	0	1	2	0		1
30-39.9	1	2	3	2	1	1	3		2
40-49.9	2	2	1	2	2	0	1		1
50-59.9	1	0	0	0	0	1	0		0
Panel B: Latino Population									
0-9.9	6	4	7	6	3	6	6	5	4
10-19.9	17	20	23	21	26	20	19	21	25
20-29.9	6	12	4	10	7	11	13	12	8
30-39.9	9	6	8	6	7	5	5	6	4
40-49.9	3	4	4	3	3	4	3	0	4
50-59.9	1	3	2	2	2	4	4	5	5
60-69.9	3	2	3	3	3	1	1	2	1
70-79.9	0	0	0	0	0	1	0	1	0
80-89.9	0	1	1	1	1	0	1	0	1
Panel C: Latino Registration (Estimate)									
0-9.9	22	27	29	29	29	27	28	27	31
10-19.9	19	18	14	15	15	18	20	18	13

20-29.9	1	2	5	4	4	5	1	2	3
30-39.9	2	2	2	2	2	1	2	3	3
40-49.9	1	3	2	2	2	0	3	2	2
50-59.9	0	0	0	0	0	1	0	0	0

*Entries are numbers of districts with stated percentages of population

Masters' = 1991 Special Masters Plans (Feb. 1, 1992 registration data)

Plans A,B,C = Plans passed by Democratic legislature

Gov. Com. = Plans drawn by Gov. Wilson's "nonpartisan" commission

Shumate = Modification of Governor's Commission plans by Gov. Wilson's redistricting consultant

Jones = Plans offered by Republicans in legislature

MALDEF = Plans offered by Mexican-American Legal Defense & Education Fund

Source: Computed from data supplied by Pactech Data Research

Equally important, the Republican plans tended, much more than the Democratic plans, to dilute ethnic minority influence by adding minority voters to Republican districts. For instance, congressional Plan A created 11 districts in which the Latino population percentage was between 30% and 60% -- which, in contemporary California, will usually produce too low a percentage of Latino registrants and potential crossover voters to elect a candidate of choice of the Latino community -- and where the Democratic registration margin over the Republicans was 15% or more.¹⁰⁸ By contrast, the Masters' plan contained only 9 such districts, that of the Governor's Commission, 8, and the Jones or Republican plan, 7. Since Latinos and, even more so, African-Americans are reliable Democratic voters, it is in the interests of Democrats to concentrate them in influence districts, just as it is in the interests of Republicans to disperse or waste those minorities who cannot be packed into a minimal number of districts.¹⁰⁹ At least as interpreted by most political professionals in the state in 1991, the Voting Rights Act kept Republicans from overpacking minorities and kept Democrats from spreading them into a maximum number of influence districts, rather than first creating minority control districts, and then joining the remaining clusters to increase minority (and Democratic) power. Even apart from the necessity of complying with the Voting Rights Act and the ideological affinity between Anglo and minority Democrats, Democrats are likely to be more responsive than Republicans are to minority concerns in reapportionment because minorities are now firmly entrenched in the Democratic leadership and because minority voters form appreciable proportions of the coalitions required to

¹⁰⁸As Figures 1 and 2 above show, a 15% Democratic registration margin was approximately the minimum needed for the district to be fairly reliably Democratic in 1990 or 1992. In 1994, the necessary margin was about 20%. Because of the geographic and economic segregation of Anglos from ethnic minorities in contemporary California, minorities will usually automatically fall into overwhelmingly Democratic electoral districts. Thus, the fact that the Republican plans create both fewer Latino influence districts and fewer still that are contained in districts generally winnable by Democrats constitutes *prima facie* evidence of intentional discrimination.

¹⁰⁹For a much extended argument about influence districts, see Kousser 1993.

elect Anglo Democrats.

Challenges to the Masters' plans by Democrats and representatives of MALDEF and the NAACP in the State Supreme Court and before a three-judge federal panel were brushed aside after brief hearings on straight party-line votes, each of the ten judges voting for the party of the person who had appointed her or him.¹¹⁰

B. WAS THE MASTERS' PLAN NONPARTISAN?

The initial election under the new lines was a Republican disaster, as Bill Clinton became the first Democratic presidential candidate to carry the state since 1964 and the first to carry San Diego county since 1944, and Democrats won two U.S. Senate seats. Under the Masters' plan, Democratic dominance of the congressional delegation declined by only one-tenth of one percent of the seats, and the party exactly maintained its 1990 margins in the Assembly and Senate. Three weeks before the election, Republican State Chairman Jim Dignan was predicting that the GOP would carry 26-29 congressional contests, but the party ended up with only 22, two of those extremely close GOP victories.¹¹¹ Why was the Republicans' faith in reapportionment frustrated, temporarily, at least, and what might have happened under other redistricting plans?

Certainly the recession, the deepest and longest in California since the Second World War, was the dominant force in the election results.¹¹² Particularly affecting Republican strongholds in Southern California, the economic downturn made George Bush so unpopular that he did not appear west of the Sierra Nevada mountains after October 1. Second was the fact that Democrats nominated more experienced and moderate candidates who often raised considerable sums. Thus, Vic Fazio spent \$1.6 million, the fourth largest amount for a congressional candidate in the country, to defend his considerably altered Sacramento district against far-right gun lobbyist H.L. Richardson, Jane Harmon amplified her appeal with her husband's family's fortune in an open seat contest against conservative anti-abortionist Joan Milke Flores, and liberal

¹¹⁰Philip Hager, "Court Rejects Appeal of Redistricting Plan," *Los Angeles Times*, Jan. 29, 1992, A3. Federal Judge Thomas Tang, a Democrat, concurred with his two Republican colleagues on the narrow ground that, without a full hearing, the Voting Rights Act challenge to the Masters' Plan had not been conclusively proven -- a position with which the plaintiffs did not disagree. The cases were *Wilson v. Eu*, 1 Cal. 4th 707 (1992) and *Members of the California Democratic Congressional Delegation v. Eu* (Case No. C 91 3383 FMS, N.D. CA). Speaker Willie Brown had reportedly had so much faith in the partisan fairness of Paul McKaskle that he allowed legislative Democrats to drop any prospective federal court challenge until it was too late to file. The NAACP apparently did not object to the congressional plan before the State Supreme Court, but did before the federal court.

¹¹¹Patt Morrison, "Congress Races Being Run on Road Full of Potholes," *Los Angeles Times*, Oct. 13, 1992, A1.

¹¹²In this paragraph, I draw on the excellent detailed analysis in *California Journal*, 1992, as well as Daniel M. Weintraub and Mark Gladstone, "GOP Loses 2 Assembly Seats Despite Remap," *Los Angeles Times*, Nov. 5, 1992, A1; George Skelton, "Wilson Hints at Softer Style After Election Drubbing," *ibid.*, Nov. 5, 1992, A1; Glenn F. Bunting and Dan Morain, "Democrats Win 10-Seat Edge in Congressional Delegation," *ibid.*, Nov. 5, 1992, A3.

Democrat Tony Beilenson survived the addition of Ventura county suburbs to his West Los Angeles district by conducting a well-tailored and well-financed campaign against Tom McClintock, the leader of the self-described "cavemen" faction of Assembly Republicans. Frank Riggs, a clear-cut Republican loser, was the only congressional incumbent of either party to fall, though several were endangered and eight retired. Nearly a quarter of the Republican primaries for the Assembly featured bitter conservative-moderate contests, and while conservatives won eleven of them, they lost five of those seats in November. Especially in Southern California, some of these were candidates of what might be termed the "bizarre right," including one who was caught on audio tape declaring his belief that the U.S. Air Force and four states had "official witches"¹¹³ and another "Christian" candidate who equated his Jewish opponent's pro-choice stance with support for the Nazi Holocaust. Democrats picked up a few seats where, according to the registration percentages, they should never have had a chance. Third, Democrats energized by their party's presidential and U.S. Senate nominations registered more than twice as many new voters as the Republicans between May and October, increasing their statewide registration margin over the Republicans from nine percent to twelve percent, and outregistering the Republicans for the first time in the last four presidential election years. The registration drive often nudged districts that had seemed likely to go Republican in December, 1991, when the Masters' Plan was announced, over into the competitive category, just as it bolstered marginally Democratic districts.¹¹⁴

Like the simulations from the elections and districting schemes of the 1970s and 1980s, simulations comparing the 1990, 1992, and 1994 contests undercut the notion that the Democratic redistricting of the 1980s drastically changed partisan outcomes. The first row of Table 6, which is computed in the same way that Tables 3 and 4 were, estimates what might have happened if the boundaries in effect had been those of the 1980s, but the relationships between voting and partisan registration had been those of 1992 or 1994, instead of 1990. The differences between what actually happened in 1990 (Democrats won 26 and 48 seats, respectively, in Congress and the Assembly) and what could have been expected to happen if the voters had behaved as in 1992 are small. In a landslide Democratic year like 1992, under the "Burton gerrymander," the Democrats would have won 28 of 45 (62.2%) of the congressional seats, instead of the 30 of 52 (57.7%) that they did win in 1992 under the Masters' Plan. (Compare the first and second rows of the table.) The Assembly would likely have contained 48 Democrats, instead of the 47 actually elected in 1992. In a good year for the Democrats, then, the Burton plan would have given the Democrats approximately two more congressional seats than the Masters' Plan with the registration patterns of November, 1992. These patterns were, as has been noted above, significantly more favorable for the Democrats than the patterns had been in 1990 or during the fall of 1991, when the Masters' Plan was drafted. (Compare row 2 with row 8.)

¹¹³In a 1994 rematch, this candidate won, allowing him to hunt whoever he wants to in Sacramento.

¹¹⁴The Republican registration as a percentage of all voters declined in 17 of the 18 most competitive Assembly districts from January to September, 1992. Daniel M. Weintraub, "GOP Bid for Assembly Control Becomes Long Shot," *Los Angeles Times*, Oct. 5, 1992, A1; Patt Morrison, "Congress Races Being Run on Road Full of Potholes," *ibid.*, Oct. 13, 1992, A1.

Table 6: What If Voters Had Behaved as in 1990, 1992, or 1994, But Under Different Redistricting Arrangements?

Behavioral Pattern						
Congress				Assembly		
Year						
	1990	1992	1994	1990	1992	1994
Plans						
Actual Lines						
1990	26**	28**	25**	48	48	40
Masters' (Nov. 1992, 1994)	--	30	27	--	48	39
Proposed Plans (Feb. 1, 1992)						
Plan A	32	33	28	50	48	41
Plan B	27	28	26	49	47	40
Plan C	30	31	27	49	46	39
MALDEF	30	30	24	47	43	38
Governor's Commission	29	28	19	45	41	33
Shumate	26	28	22	45	40	35
Jones	25	24	24	44	43	36
Masters' (Feb., 1992)	26	28	22	45	41	37

*Entries are numbers of seats won or estimated to be won by the Democrats.

**of 45 seats -- all other congressional results are of 52 seats

Behavioral Pattern = Based on regression of relationships between election outcomes and registration in the stated year

1990 = 1984 redistricting plans, with registration data as of 1990

Masters' Actual = 1991 Special Masters Plans (Nov., 1992 and 1994 registration data)

Plans A,B,C = Plans passed by Democratic legislature

Maldef = Plans offered by Mexican-American Legal Defense & Education Fund

Gov. Com. = Plans drawn by Gov. Wilson's "nonpartisan" commission

Shumate = Modification of Governor's Commission plans by Gov. Wilson's redistricting consultant

Jones = Plans offered by Republicans in legislature

Masters' Proposed = Special Masters' Plan with registration data as of Feb. 1, 1992

Source: Computed from data supplied by Pactech Data Research

Nonetheless, reapportionment plans that were not adopted would probably have changed the outcomes dramatically. Rows 3-8 of Table 6 show how many seats Democrats could have expected to win under each of the plans if the relationships between party registration and voting had been those observed in the 1990, 1992, or 1994 elections.¹¹⁵ If the relationships between party registration and voting had been the same as in 1990, Democrats could have expected to win 32 seats in Congress under the most pro-Democratic plan, Plan A, while under the plan proposed by the Republicans, termed the "Jones Plan" in the table, Democrats were likely to win only 25. For the Assembly, the expected difference in the two plans was six seats in 1990. Under the conditions of 1990, results under the Masters' plans tracked those under the more openly pro-Republican Jones and Shumate plans much more closely than under the plans proposed by the Democrats. Since it reflects the consequences that keen political observers might reasonably have anticipated on the basis of the most relevant recent data, columns 1 and 4 of these rows of Table 6 give the best indications of the partisan intent of each plan.¹¹⁶

As the extent of the 1992 Republican debacle in California became clear, some Democratic insiders claimed privately that the party was better off with the Masters' lines than they would have been with the plans they had fought for so hard, reasoning that some of the supposedly large number of marginally pro-Republican districts in the Masters' plan would wash ashore in the Democratic tide. However plausible the reasoning, Table 6 suggests that it is wrong. If the behavioral relationships in 1992 had been just as they were under the Masters' Plan, but Plan A had been in effect, Democrats would have won 35, instead of 30 seats in Congress, and the same number, 48, in the Assembly. Under Plans B and C and the MALDEF Plan for Congress, which Democrats ended up backing during the federal court challenge to the Masters' Plan, Democrats would have carried from one to three more seats than under the Masters' Plan. For the Assembly, they would likely have done much better under Plans A, B, and C, and somewhat better under the MALDEF plan than under the Masters' plan. The most striking differences in Table 6, however, are between the Jones or Republican plan for Congress and the Masters', Commission, and Shumate plans for the Assembly, on the one hand, and all the other plans, on the other. The Masters' plan with the registration percentages at the time it was approved, as well as the Governor's Commission plan and its modification by Shumate would have been likely to give Democrats the barest of Assembly majorities. The Jones Plan so artfully packed Democrats into as few districts as possible that even in a year of Republican disaster -- Democrats won 57.1% of the two-party vote for Congress in the average district -- Republicans would be expected to win 28

¹¹⁵The Masters' Plan is listed in row 8 with its registration as of February, 1992, to make its registration patterns comparable with the proposed plans that were not adopted. In row 2, its registration is as of November, 1992 and November, 1994, respectively.

¹¹⁶Even if the contentions of the Governor's Commission and the Special Masters that they ignored partisan considerations are credited, no one else ignored the partisan consequences of their plans, and those consequences played a large role in the reception each group gave to the "nonpartisan" plans.

of the 52 congressional seats (53.8%).¹¹⁷ The difference between Plan A and the Jones Plan was nearly as large as the national swing in congressional seats in 1992!

Although the party registration percentages in California barely budged between November, 1992 and November, 1994, the national surge in the tendency to vote Republican (Ladd 1995) cost California Democrats 9 Assembly and 3 congressional seats in 1994, several on each side being decided by extremely close margins. Had the Burton plan been in effect, Democrats would probably have held two more seats in Congress, and Plan A would have given them one more. (See Table 6.) Likewise, the Democratic plans of the 1980s or 90s might well have retained slight Democratic majorities in the Assembly. The contrast with the Republican and Masters' plans is again stark. Although Democrats won 51.7 % in the average California congressional district and 52.3% in the average Assembly district, the esthetically correct Governor's Commission plan would have awarded them only 36.5% of the congressional and 41.3% of the Assembly seats. The Republicans would likely have won fewer congressional seats in their banner year of 1994 under the Jones plan than under the Masters' plan.

Why different plans would be likely to lead to different results is made strikingly clear in Figure 5, which compares Democratic registration margins in the 52-seat Jones congressional plan with those in the 45-seat Burton-Berman plan of the 1980s. The upper right-hand corner shows that the Jones plan contained many more heavily Democratic districts than the 1982 plan, which enabled it to shave Democratic totals elsewhere. In the crucial central portion of the graph, Republicans created as many districts as possible in which the Democratic margin was below five percent, and then jumped to fairly safely Democratic districts in which Democratic margins were fifteen percent or more. The apparent Democratic strategy was the mirror image of that of the Republicans -- pack Republicans and create as few districts with less than a five percent margin and as many with fifteen or more percent as possible. Three points follow: First, both parties had incentives to establish as few highly competitive districts as possible, and they acted in accord with those incentives. Second, the technicians of both parties were sufficiently competent that they could simultaneously maximize their potential number of victories in "good" years and minimize their losses in somewhat worse years.¹¹⁸ Third, although comparisons between plans are instructive and clearly demonstrate their intentions, it is impossible to determine which is less partisan without choosing some "fair point" or making an inescapably arbitrary definition of a competitive range of districts.¹¹⁹ For instance, the Jones plan contained only four districts in which the registration gap in Figure 5 was more than 6% and less than 20%, while the Burton plan, as of 1990, contained 11. On the other hand, 10 of the Jones plan's districts had registration margins of

¹¹⁷The Democrats' margins in an average district in 1992 would have been approximately the same under almost all of the proposed plans. See Kousser 1995, Appendix B.

¹¹⁸If the relation between votes and registration were that of 1980 (which is unlikely, since Republican voters grew increasingly less loyal and Democrats more loyal during the 1980s), then all the congressional plans of 1991 would imply a Republican congressional landslide of 32-33 of the 52 seats.

¹¹⁹Even the most statistically complex attempts to estimate partisan bias in redistricting plans make such arbitrary assumptions, as, for instance, Gelman and King's decision to calculate Bayesian posterior distributions of hypothetical seats-votes curves between the voting percentages of 45% and 55%, or Campagna's decision, using a simpler but parallel model, to set the range at 40% to 60%. See Gelman and King 1990, 278; Campagna 1991.

between 0 and 6%, while this was true in only 6 of the Burton plan's districts. What is the legally or social scientifically correct fair point, and how would one practically apply a standard based on the widely discussed principle of symmetry? (Gottlieb 1988.)

(Figure 5 about here)

Figures 6 and 7 show that the 1991 Masters' plan for Congress resembled the Jones plan much more closely than it did Plan A.¹²⁰ The Masters' plan packed Democrats more and Republicans less than Plan A does, and the registration gap between Democrats and Republicans was consistently less in the middle range of the Masters' plan than it was in Plan A. Both created about the same number of highly competitive districts. Figure 7 demonstrates that there were only subtle differences between the Masters' plan (using February, 1992 registration data) and the Jones plan. Essentially, the Jones plan had somewhat larger jumps in the center portion of the graph, while the pattern of registration differences in the Masters' plan climbed a bit more smoothly. Although such tiny distinctions could lead to as much as a four-seat shift in such a very good Democratic year as 1992, they would become unimportant in a more normal election year.

(Figures 6 and 7 about here)

C. JUDICIAL CHALLENGES TO THE MASTERS' PLAN

The opinion in *Wilson v. Eu* by the Republican Chief Justice¹²¹ scornfully dismissed charges by the Assembly Democrats that the Masters' Plan was biased in favor of his party, characterizing their comparison of the districts with the 1990 gubernatorial election returns as "dubious" and a second test based on registration statistics as "of similarly doubtful utility." "Yet predictions of future election contests are quite obviously speculative and imprecise, involving the weighing of countless variables," Chief Justice Lucas declared. Purported attempts by the Masters to comply with the Voting Rights Act and the various amorphous state criteria for redistricting, he asserted without evidence or further argument, would automatically produce plans that were as fair to all concerned as any devised by the legislature -- and that is all that was required.¹²²

¹²⁰The patterns of other Democratic plans and the MALDEF plan, and their contrast with the other pro-Republican plans are very similar, as are the contrasts for the Assembly plans.

¹²¹Chief Justice Lucas continues to be an active and open partisan. Three years before the 1998 gubernatorial election, Lucas, in an infraction of the State Judicial Code of Conduct, publicly endorsed State Attorney General Dan Lungren, who argued *Wilson v. Eu*, and who has often argued major cases before the California Supreme Court, for Governor. Maura Dolan, "Justice Says He's Sorry About Endorsement," *Los Angeles Times*, Aug. 10, 1995, A3.

¹²² *Wilson v. Eu*, 1 Cal.4th 707, 727 (1992). For similar comments, see *Davis v. Bandemer*, 106 S.Ct. 2797, 2825 (1986), (O'Connor, J., concurring.) In contrast to 1973, when McKaskle assessed the partisan consequences of his plan and found it fair, this time he listed a long series of possible complications with such a measurement. In fact, as Kousser

Lucas's argument was disingenuous, false, and illogical. It was disingenuous for the head of a court that had been taken over through an eight-year-long, highly partisan series of expensive election campaigns to dismiss summarily, without offering any reasoning or evidence himself, the plausible attempts by his Democratic foes to gauge the partisan effect of the Masters' plan. When everyone else freely discussed what they agreed were the likely pro-Republican consequences of the Masters' districts, Lucas's pose of innocent ignorance was unconvincing. It is false because, as I show elsewhere (Kousser 1995), winners in the Assembly and Congress can usually be predicted about 90% of the time by one who knows only major party registration statistics in each district. If the Justices wished to test the predictive power of party registration on voting, they had only to look in the mirror, because every Republican Justice voted for the Masters' plan and the one Democratic Justice voted against it. Lucas's stance was illogical because the assertion that -- allegedly -- pursuing goals of ethnic fairness, compactness, etc. would guarantee the attainment of the wholly different goal of partisan fairness is a *non sequitur*.¹²³ Whatever the criterion of partisan fairness, it must be related only to the partisanship of outcomes. And the much closer resemblance of the registration patterns of the Masters' plans to those of the Republicans than to those of the Democrats suggests that the predictable partisan effects of the Masters' schemes tilted toward the party of the majority of the Supreme Court and of the Masters' panel.¹²⁴ While it may not be possible to determine the degree of partisanship of any particular plan in an absolute sense, it is demonstrably simple to compare one plan with another. If courts want to be considered more than just another venue for cutthroat reapportionment politics, they should take the effort to assess partisan consequences more seriously than the Deukmejian Court did.¹²⁵

After the U.S. Supreme Court's 1993 decision in *Shaw v. Reno* (113 S.Ct. 2816) that "racial gerrymandering" was justiciable, two Richmond, California attorneys, seemingly unconnected to any party or interest group, filed a federal court challenge to the Masters' Plan and to other aspects of the state election

1995, Tables 1 and 2 show, outcomes were less, not more predictable in the 1970s than in the 1980s. The Report's discussion seems, therefore, less a cautious recognition of complexity than a rationalization of a recognized partisan outcome. *Ibid.*, 795.

¹²³In fact, application of many of the popular redistricting criteria are likely to lead to pro-Republican outcomes. See Lowenstein and Steinberg 1985.

¹²⁴A telltale indication of the partisan bias of the Masters' panel is the treatment of the proposed Republican and Democratic plans in the panel's report. The report dismissed the Democrats' plans for having "calculated partisan political consequences (the details of which are unknown)," while the presentations in favor of the Republican plans were said to be "clear and persuasive." The Masters refused to adopt the Republican plans, they claimed, only because they were flawed in (unspecified) detail and presented late in the process. *Wilson v. Eu*, 1 Cal. 4th 707, 765, 768 (1992).

¹²⁵U.S. Supreme Court Justice Byron White noted in *Gaffney v. Cummings*, 93 S.Ct. 2321, 2332 (1992) that a "politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results; and, in any event, it is most unlikely that the political impact of such a plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended." As governor, Deukmejian led the campaigns to reject Bird and the other Democrats, and he appointed a majority of the membership of the court that sat in *Wilson v. Eu*.

code, including, quirkily, the provision that prevents a person from running for more than one congressional seat in the state at the same time. Pointing out that the Masters' Report openly admitted -- indeed, emphasized -- that the Masters had taken account of the racial characteristics of the population in order to draw districts that would "withstand section 2 [Voting Rights Act] challenges under any foreseeable combination of factual circumstances and legal rulings," and that in Los Angeles County, they started "by tracing a line around census tracts with majority or near majority Latino population," (*Wilson v. Eu*, 1 Cal.4th 707, 745, 776 (1992)), the Anglo plaintiffs charged that they and other white people had been discriminated against.¹²⁶ Taking race into account at all in districting, they claimed, "segregated" voters in violation of *Brown v. Board of Education* (347 U.S. 483 (1954)) and set up racial "quotas," which fell afoul of *University of California Regents v. Bakke* (438 U.S. 265 (1978)). (Smith and DeWitt 1995.)

A three-judge panel consisting of one Democrat and two ethnic minority Republicans, in a six-page opinion written by Ninth Circuit Judge Procter Ralph Hug, Jr., a Carter appointee, concluded that the Masters' districts did not violate "the narrow holding of *Shaw*," because race was not the "sole" criterion used for drawing districts and because the resulting districts did not have "extremely irregular district boundaries." According to Hug, the Masters' Report indicated that they had engaged in "a judicious and proper balancing of the many factors appropriate to redistricting. . . . [W]here race is considered only in applying traditional redistricting principles along with the requirements of the Voting Rights Act, . . . strict scrutiny is not required. However, if it were required, we conclude that this California redistricting plan has been narrowly tailored to meet a compelling state interest." (*DeWitt v. Wilson*, 856 F.Supp. 1409, 1413, 1415 (1994).) The compelling interest was apparently compliance with the Voting Rights Act, and an informal "eyeball" evaluation of compactness was all that the court felt necessary to satisfy narrow tailoring. On the same day that the U.S. Supreme Court decided *Miller v. Johnson*, which held that a districting plan would be subject to strict scrutiny only if race were the "predominant factor motivating the legislature's opinion," disregarding "traditional race-neutral districting principles," it summarily affirmed Hug's decision in *DeWitt*. (115 S.Ct. 2637(1995)). The implication seemed to be that even if race were admittedly the predominant motive for drawing minority opportunity districts, those districts could be sustained if they did not appear too irregular to a judge's glance and if their boundaries did not cross more jurisdictional lines than necessary.

¹²⁶They also contended that allocating seats on the basis of population, rather than proportionally to registration or to votes actually cast systematically discriminated against Anglos, because minorities registered and voted in smaller proportions. The three-judge panel scornfully dismissed this argument that the effects of past discrimination should justify more, not less, present and future discrimination, and the Supreme Court affirmed this finding without comment. (Smith and DeWitt 1995; *DeWitt v. Wilson*, 115 S.Ct. 2637(1995)).

V. CONCLUSION: POLITICS, COURTS, AND MINORITY VOTING RIGHTS

What lessons should we draw from the reapportionment experiences of the nation's most populous state for three decades? First, constraints matter. Had there been no *Reynolds v. Sims*, and had the passions of reapportionment been as high as they were, it is difficult to imagine that one party or another would have refrained from creating massively overpopulated and underpopulated districts. Given the chance, Republicans might have made Los Angeles county one Senate district, as it had been before 1965, while Democrats might have crammed Orange and San Diego counties and as many affluent suburbs of Los Angeles county into as few districts as they pleased. Depending on which party controlled reapportionment, the lack of an equal population standard might have more gravely disadvantaged Latinos and especially African-Americans, concentrated as they are in major urban areas, than the lack of the Voting Rights Act would have. Nonetheless, without the Voting Rights Act, the ability of Republicans to pack ethnic minorities (as in the 1991 congressional and Assembly plans of the Governor's Commission) and of Democrats to place them in areas that maximized Democratic, but not necessarily minority political power would have been much greater.

Second, history matters. The experience of deadlock and a court-ordered reapportionment drawn by Paul McKaskle in the 1970s, and of the reapportionment decisions of the Bird Court in the 1980s created expectations on both sides of the partisan divide in the 1990s. Speaker Willie Brown believed that McKaskle would be unlikely to create plans that would be as bad for Democrats as those that the Republicans were offering, which reduced his incentive to compromise. Republicans believed that the State Supreme Court had acted in a pro-Democratic fashion in both the 1970s and 1980s, and they were sure that their Court would reverse the sign of partisanship, but retain the intensity in the 1990s, so Gov. Wilson and the state and national Republican leadership never seriously considered compromises with the Democrats. The Republican furor over the "Burton gerrymander" fueled referendum campaign after campaign in the 1980s, fired their special effort to keep the governorship in 1990, and consumed them with a desire for revenge. Republican bitterness over failing to gain control of reapportionment during the 1980s stimulated their successful effort to limit legislative and congressional terms.

Third, the concerns of ethnic groups cannot be separated from partisan politics. The redistricting deal of 1971 unraveled because the Democratic party's effort to elect a third Latino to the Assembly (from a district in which only about 20% of the registered voters were Latino) failed in one of the roughest campaigns that Republicans have ever run in the state. The only reapportionment in three decades in California controlled by the legislature, that of the 1980s, tripled the number of Latino members of Congress and drew numerous districts that increased the influence of minority ethnic groups. All of the pro-Republican plans of 1991, including the Masters' plan, scattered blacks and Latinos, diluting their influence far more than the MALDEF or Democratic plans did. The Republican strategy of bashing minorities for 9 out of every 10 years and then courting some of them during the redistricting year lost its viability as Democrats gradually and somewhat grudgingly agreed to draw districts where African-Americans or Latinos enjoyed good chances to elect candidates of their choice. As the minorities elected became key Democratic leaders, the Republicans abandoned all pretenses of conciliating minorities and consequently, the interests between Democrats and

minority constituents became even more strongly positive.

Fourth, having to take account of incumbency in order to pass a plan in a legislature dampens partisanship in redistricting, while being able to write on a much cleaner slate allows partisanship (or any other motive) much freer rein. Like other self-interested individuals, legislative incumbents generally prefer individual safety and certainty to the good of some larger group, such as their political party. Indeed, incumbent self-interest is undoubtedly a much more effective constraint in redistricting run by a legislature than such nebulous concepts as "compactness" or "communities of interest," which can easily be manipulated to rationalize any plan.¹²⁷ Two important implications of this reflection follow: First, reapportionment by commission may allow a more partisan plan to be put into force. While every redistricting commission proposal made during the 1980s recognized this obvious danger by institutionalizing some scheme of partisan balance, the Governor's Commission, appointed by Gov. Wilson alone, and the Special Masters, appointed solely by the State Supreme Court in 1973 and 1991, made only small gestures toward bipartisan control, and, as Tables 3 and 6 and Figure 7 demonstrate, all three produced plans that reflected the partisan interests of those who appointed them. Second, when six- and eight-year term limits in the state legislature remove incumbency as a softening factor in reapportionment in the year 2001, partisan advantage is likely to become an even more important motive, and conflict is likely to be even more virulent -- difficult as that may be to believe. If one party controls all four of the most relevant political bodies (the Assembly, the Senate, the governorship, and the State Supreme Court) during the redistricting, the "Burton gerrymander" may seem tame by comparison with the plan that will emerge. If control is split, or perhaps even if it is not, the State Supreme Court will be trumps, as in 1991. If a political monopoly by one party seems likely in 1998 or 2000, the other party will presumably seek to pass a commission initiative, and the intellectually unedifying spectacles of the 1980s, which did so much to bring the state government into disrepute, will be revisited.

Fifth, despite extreme claims by some journalists and scholars, redistricters who have to get plans ratified by legislatures have not, in the past, at least, been able to perform partisan miracles. In a 1992 article, Professors James Fay and Kay Lawson assert, without presenting any evidence whatsoever, that in California reapportionment, "Whichever party rules the game can give itself about a three-to-two advantage in the

¹²⁷A good example of rationalization on the basis of a supposed "community of interest" may be found in "Declaration of Joseph Shumate in Support of Defendant Pete Wilson's Opposition to Plaintiffs' Motion for Preliminary Injunction," filed in connection with *Members of the California Democratic Congressional Delegation v. Eu* (Case No. 91-3383 FMS Civil, U.S. District Court, Northern District of California), 8-9. Defending the Masters' congressional plan, Wilson's redistricting consultant defends the decrease in the Latino population percentage in District 30 on the grounds that it was necessary to avoid splitting the "Koreatown" section of the city of Los Angeles. There are only three difficulties with this position. First, the Masters' did in fact split the generally recognized bounds of that unincorporated area almost exactly in half. Second, only 13% of the Koreans in Los Angeles county in 1984 were registered to vote. Third, of that 13%, about a fifth did not register with a major party, and many others, perhaps a majority of those remaining, were Republicans. (Nakanishi 1991.) Since the district was overwhelmingly Democratic, Koreans would be extremely unlikely to compose more than five percent of the decisive Democratic primary electorate -- a proportion much lower than the Masters or Shumate attempted to corral in black or Latino influence districts.

House delegation."¹²⁸ Yet as a close analysis of the "Burton gerrymander" has shown, and as other careful scholars have argued more generally, the overall effects of redistricting on the partisan balance have been small to nonexistent.¹²⁹ Why, then, have such exaggerated tales persisted? One reason, it seems likely, is the inattention and cynicism of the public, which is ready to believe almost anything bad about legislators. Another is the self-interest of all the insiders. Phil Burton and other reapportionment experts basked in their reputations as wizards who put a curse on the evil opposition. Republican losers consoled themselves with the thought that the outcomes were beyond their control, that they and their ideas were not really rejected in a fair contest. Others, by exaggerating the effect of current or past districting schemes, tried to promote "reforms" that they believed would help their party by mandating "compact" and/or "competitive" districts, districts in which (they hope) their superior financial resources will prove decisive, and which will in any event limit the number of seats that the more geographically concentrated Democrats can win. (Atwater 1990.) Journalists tried to convince themselves and their readers that their stories on arcane subjects really mattered. In sum, the effect of redistricting may be blown out of proportion because participants may want to puff their reputations or justify what they have done or had done to them, while citizens may seek to rationalize their alienation and apathy.

Sixth, term limits will sweep experienced ethnic minority politicians, especially Speaker Willie Brown, out of the legislature. No minority politician -- and few Anglo politicians -- with experience in redistricting is likely to be in the California legislature in 2001, even assuming that the legislature has any real power over that reapportionment. As a result of the term-limit "reform," real power, in this and other legislative activities, will pass to lobbyists and unelected and unknown technicians, with little effective oversight from the transient, unprofessional politicians that term limits guarantee.

Finally, if *Shaw* encourages redistricters to exalt esthetics over the social and political reality of continued racial polarization and discrimination, and if *Miller* prevents those interested in redistricting from explicitly talking about its ethnic consequences and encourages challenges from Anglo voters to every minority opportunity district, then the state could easily end up with plans like those of the Governor's Commission, under which the chances for minorities to elect or even to influence the election of candidates of their choice would be drastically reduced. Across the nation in 1991, minority organizations participated in redistricting more than they ever had before, and they had on their side the pressure of the Voting Rights Act, interpreted by the U.S. Department of Justice to require states and localities to offer special justifications for rejecting proposed or possible minority opportunity districts. In California, everyone except the Governor's Commission appeared to accept as a first principle the Ninth Circuit Court's statement in *Garza v. Los Angeles County Board of Supervisors* that "The deliberate construction of minority controlled voting districts is exactly what the Voting Rights Act authorizes." (918 F.2d 763, 776 (1990), quoted in *Wilson v. Eu*, 1 Cal.4th 707, 717 (1992).) Without the leverage that that interpretation of the law gave them, members of minority groups would have had much less power to force politicians, judges, and bureaucrats to listen to

¹²⁸Fay and Lawson 1992, 27. It is not clear what they mean by a "three-to-two" advantage -- a higher seats/votes ratio? 60% of the delegation?

¹²⁹Glazer *et al.* 1987; Butler and Cain 1992, 8-10.

them, and the discussions of minority representation in the news media and in the corridors of power would have been much less open and informative. If courts and Republican politicians insist on a “color blind” reapportionment in 2001, only the public is likely to be kept in the dark, and the resultant plans are likely to insure that the legislators become, in their ethnic characteristics, more like those of the 1950s and 60s than like the multi-hued group elected during the 1990s.

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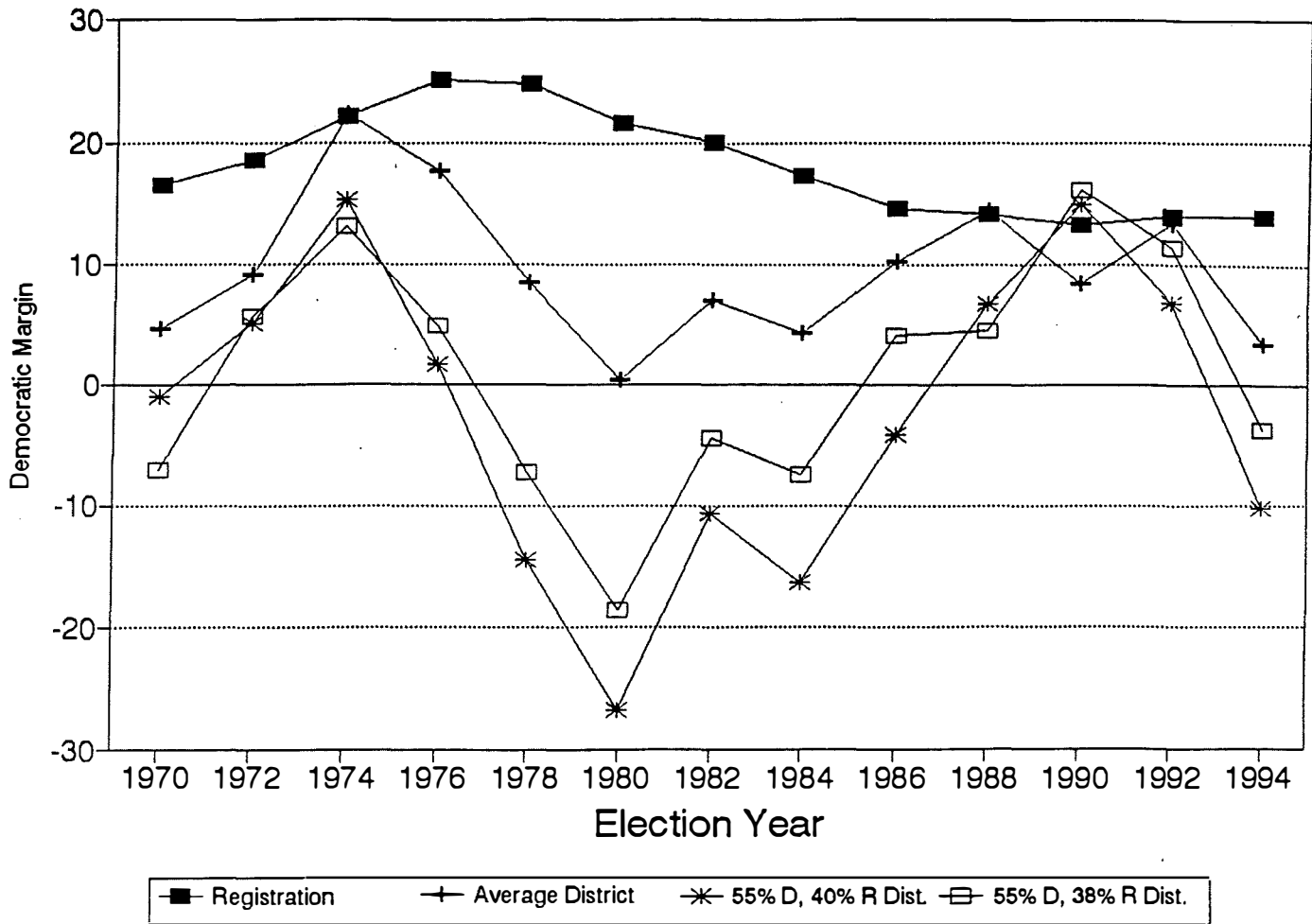
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FIGURE 1: Democratic Margins in Congressional Contests, 1970-1994



**FIGURE 2: Democratic Margins in
State Assembly Contests, 1970-1994**

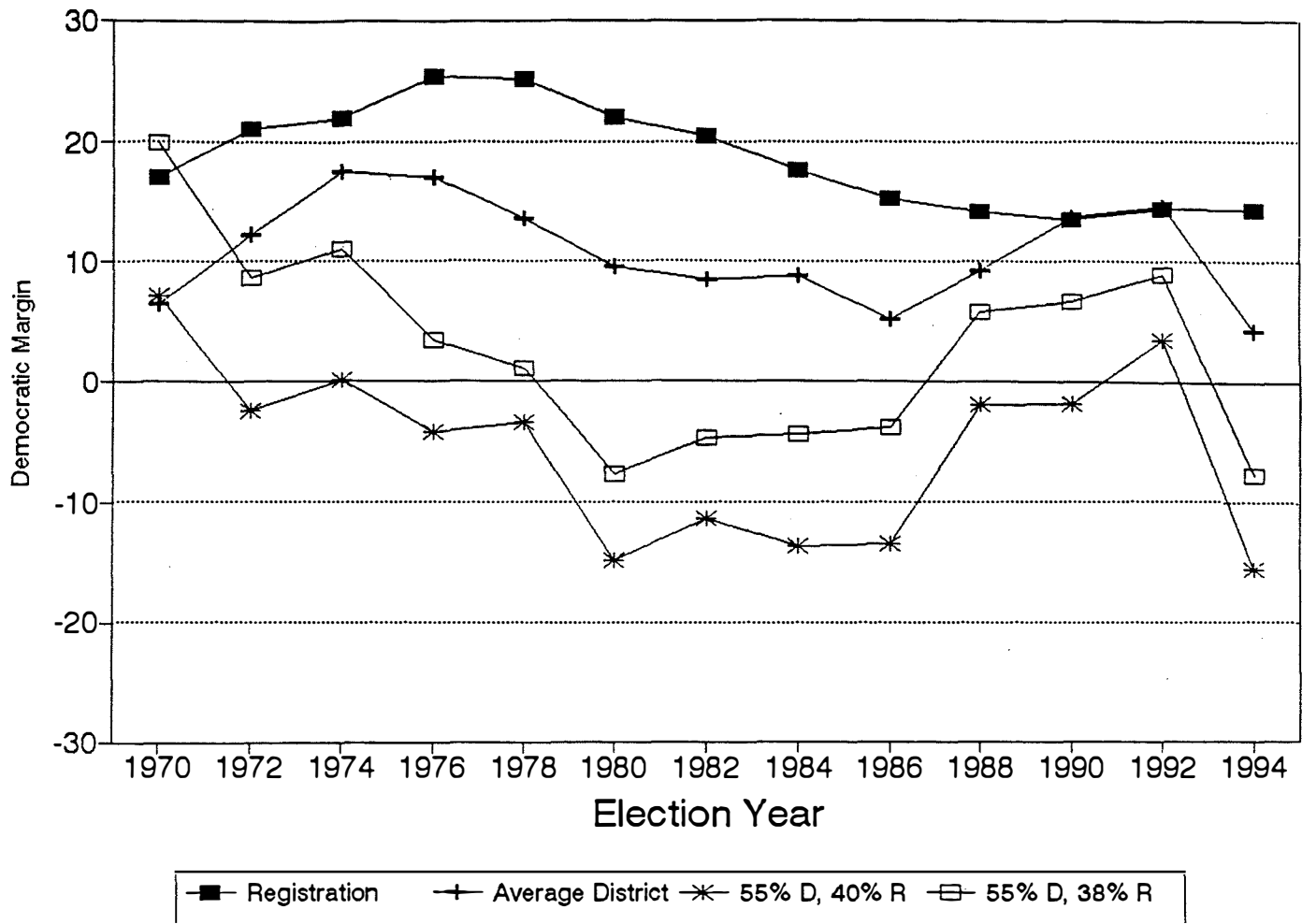


Fig. 3: Registration Margins, Congress
Masters' (1980) vs. Burton (1982)

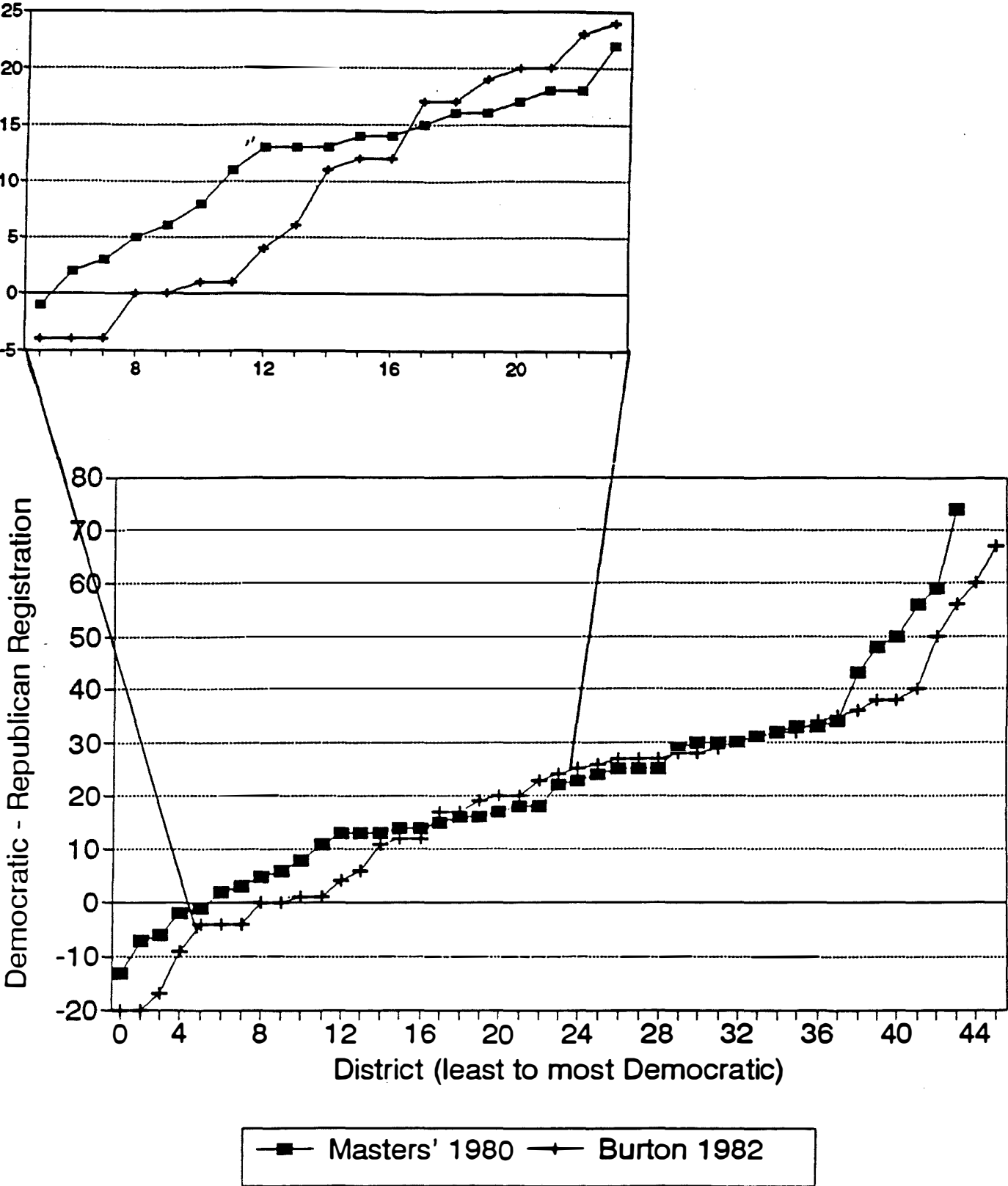


Fig. 4: Registration Margins, Congress Masters'(1980) vs. Burton-Berman (1984)

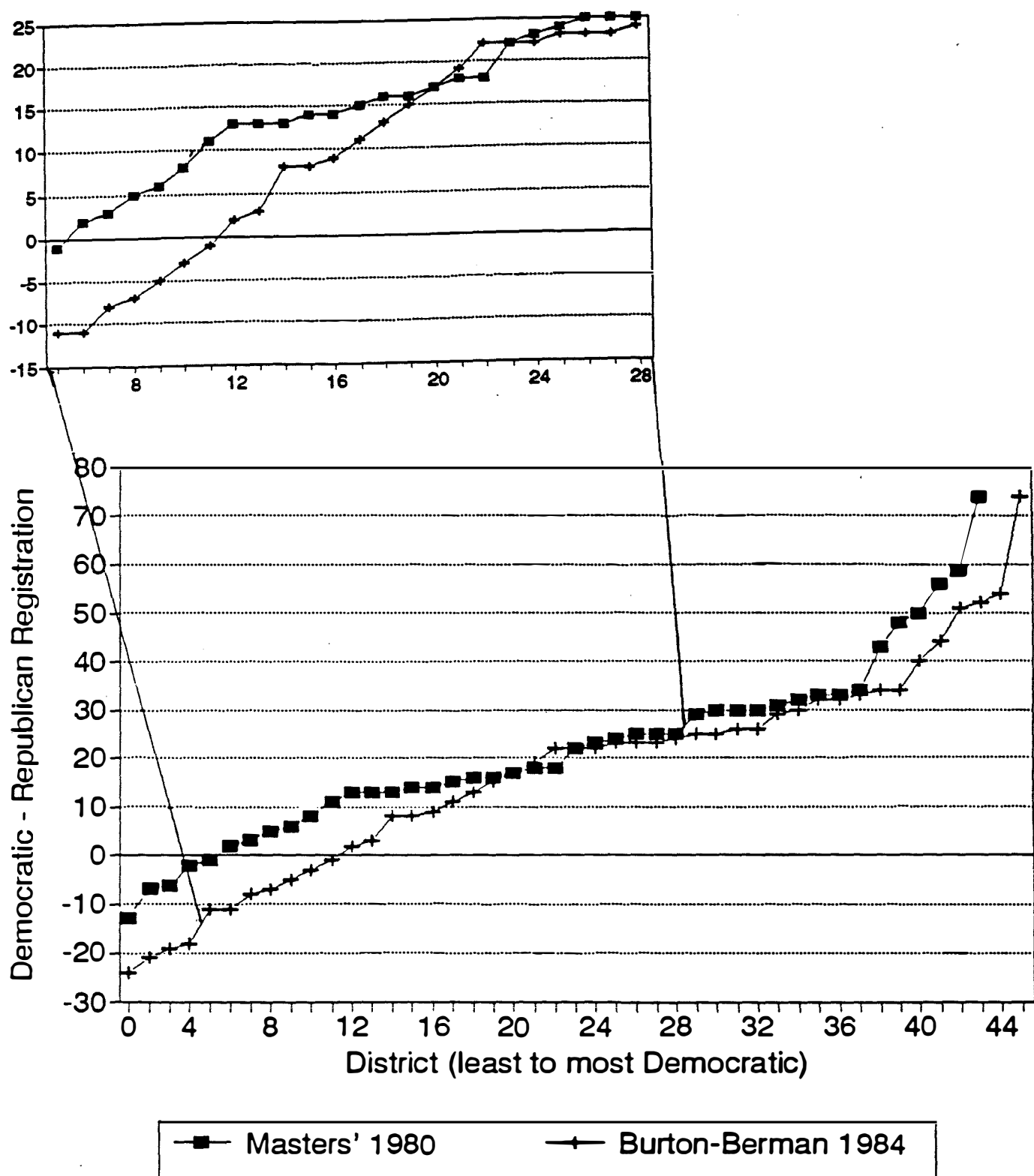


Fig. 5: Registration Margins, Congress
Burton Plan vs. Jones (Republican) Plan

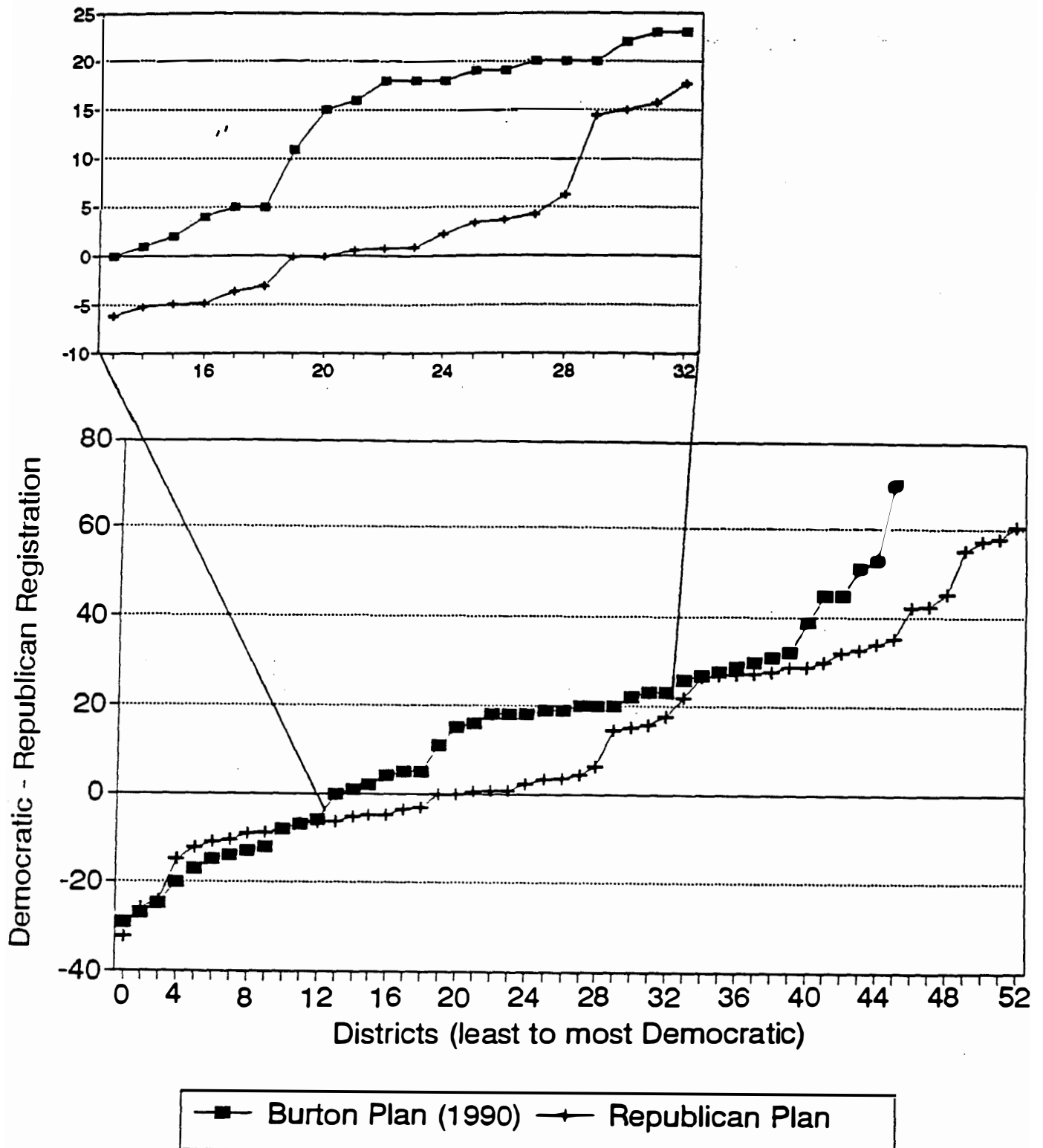


Fig. 6: Registration Margins, Congress Masters' Plan vs. Plan A

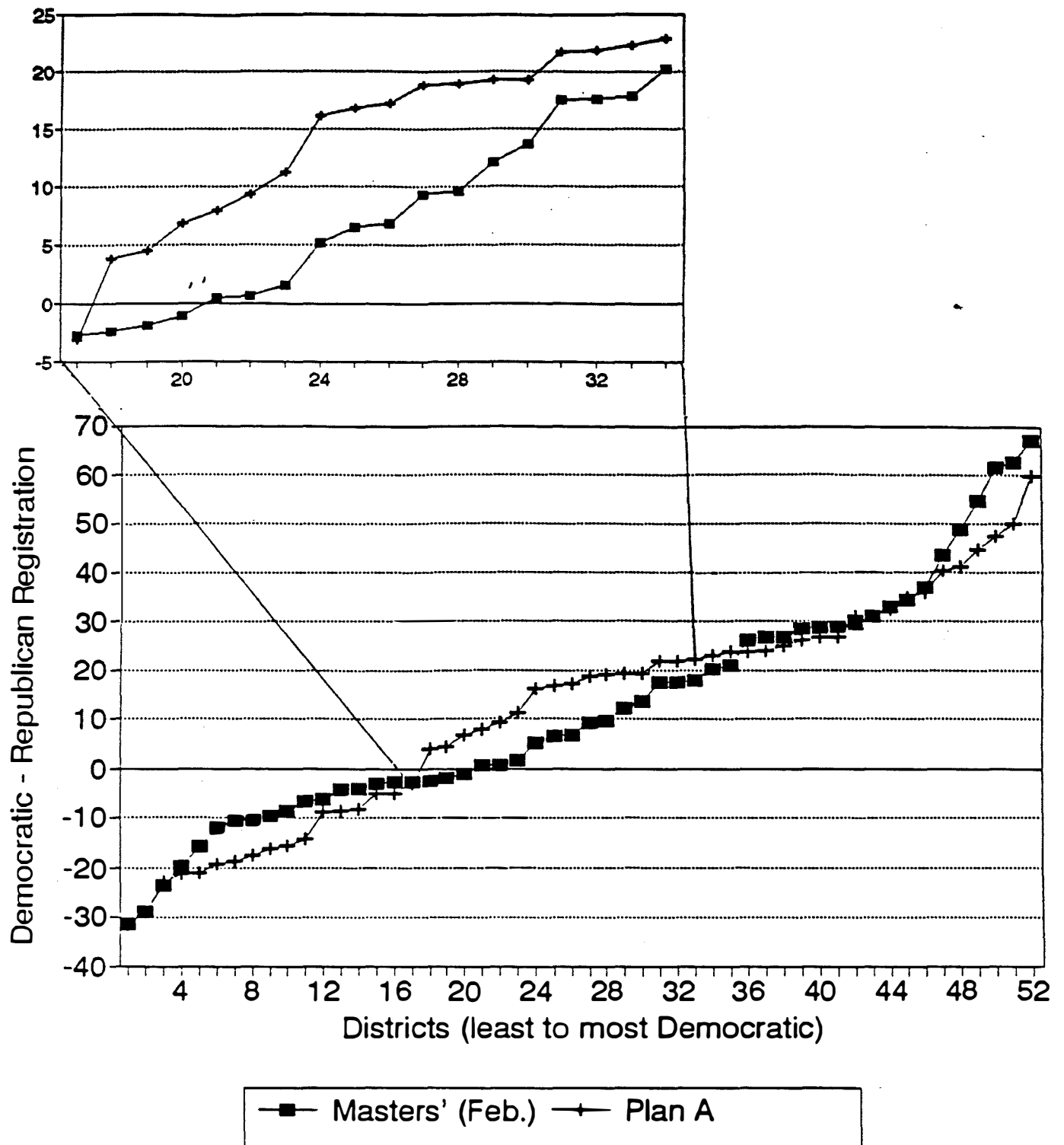


Fig. 7: Registration Margins, Congress Masters' vs. Republican Plan

